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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 686

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF  
AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 687

THE RAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF  
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS  
OF AMERICA, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 688

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING  
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,  
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 689

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES  
COUNCIL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 690

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP  
LUMBER & MILL COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.  
NOVEMBER 13, 1944.

CERTIORARI GRANTED JANUARY 2, 1945.

No. 10011

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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LUMBER PRODUCTS ASSOCIATION, INC.,  
a corporation, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

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**Transcript of Record**  
**In Four Volumes**  
**VOLUME III**  
**Pages 949 to 1406**

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

CHARLES HELBING,

called as a witness on behalf of defendants; was duly sworn and testified as follows:

Direct Examination

By Mr. Howard:

I have been a millman about 30 years, since 1904, is when I joined the Brotherhood. Prior to that I was with the Amalgamated Wood Workers for two years. I have worked in various mills in this locality during that period, and I am employed now at Wisdom Mill & Lumber Company, San Mateo.

I was president of Local 42 in 1906, and have been active as delegate to the District Council, also Building Trades Council. I was business agent in 1936 to the latter part of September, when I resigned. When the agreement of September 21 was signed, I was out of the city. I was broken down with health and ordered by the doctor to take a rest. I got back in February, 1937 and worked in Brisbane for a while.

I became business agent of Local 42 again in 1939, in the middle or latter part of January. There was a confusion in the mills in regard to the auditing of the old and the new work, and I helped straighten that matter out. That had reference to a change in wage scale as it affected old and new work under the wage agreement. The award was handed down June 15 and the work that went prior to that was allowed to be done on the old wage before they advanced the wages. Other duties were

(Testimony of Charles Helbing.)

to enforce the stamp. We had a contract which was negotiated with the Associated Mills and that contract was also applied to the independent mills, where we were successful in getting them to come along, which meant the same contract. The contract seemed to be abused to an extent of not living up to it by some of the independent mills, and there was unfair material passed out with union material, which was absolutely against the contract and hard to distinguish on the [746] outside, whether it was all union or all unfair. There was complaint about non-union material being run through these contract mills and reaching the jobs, because the contractor or the carpenter, himself, which we contacted, would have some work there that had the union label, the Brotherhood stamp, and some material that was not stamped, and confusion was such that our membership was accused of neglect of watching for stamped material, and we had to press the matter so that we as millmen knew that was not a fact, and to establish that and get the proof, we had to canvass these shops and find out exactly what was going on. We did find that to be a fact. There was some stuff stacked up that didn't have the label and they were mixing it with material that did have the label, and so disguising the work that it would be handled unbeknown to the carpenter, that he was using anything not exactly what he wanted to use in regard to handling union-made material.

(Testimony of Charles Helbing.)

I began to check material going through on these jobs to see what was union and what was non-union. At the time the minutes of Local 42, under date of April 19, 1938, was reported, "Brother Helbing stated that mill stamp was not properly enforced, and that the carpenters were not demanding stamped material. Fight of Local 42 was to see that carpenters do enforce stamp. Pledge to mill owners to enforce stamp was not carried out, and it may become injurious to coming negotiations."

I was working on machines in a plant that did not belong to the Association, and I knew it was violating the agreement, using material that was not allowed in the contract, and thereby was indicating to the organization that we were not carrying out our contract—asking for the activity of the business agent, that we as an organization when we signed a contract with this associated organization and independent mills have the same contract, and a pledge to us that they will be upheld, and that was not being done. The contract referred to with the so-called [747] association was the identical contract entered into as to provisions with all of the other mills in the locality—the 1936 contract. I don't know how many associated mills were in there exactly—there ain't over 10 or 12, the same number of cabinet makers. We have a list of mills that have signed the contract that may be well over a hundred. Practically all of the mills in the locality were unionized by the same 1936 contract, at the

(Testimony of Charles Helbing.)

time I was speaking. These contracts were signed with the individual mills the same as the association contract, and there is naturally a pledge to uphold them. The same contract exists. The only difference is language on the top, but the contract and carrying through is the same, signed by the individuals and turned in to the District Council of our organization, for approval. My comment related to the enforcement of the contract without discrimination among all of the contractors.

The circumstances that relate to Coos Bay Company referred to in the minutes of the meeting of May 9, 1939, wherein it was stated, "Stopped 31,000 feet of T. & G. in San Mateo that was rerunned at the Coos Bay Mill in Oakland, which mill has hired union men at all times, but does not have a union label, \* \* \*" were that no material was stopped. I happened to be there and saw this material, and it was not stamped, and I asked the contractor where it come from. We found out this material was run at Coos Bay, supposed to be made under a fair condition, and that was all there was to it. It came from a place that was employing our men—a local matter. I could not say if they had a contract, but I was informed from the other side of the Bay the firm was employing our men and that settled that part of it. It was not rerun to my knowledge. Coos Bay Lumber Company produced it in the first instance.

The circumstances giving rise to the minutes of

(Testimony of Charles Helbing.)

May 16, 1939, wherein it was reported that the Greater City Lumber Company [748] was bringing mill material in San Francisco and B. A. Helbing take the matter up with these people. We found that the Greater City Lumber Company brought in some jambs to be put through a process that our local men, the carpenters, would handle. It had no stamp. We found there was a mixture of union-made material and some without the stamp—a quantity of jambs that go around the door. There had been complaint to the organization that we should straighten matters out in such a manner that he could handle the stuff, all union—not partly one way and partly the other way. That is the Greater City Lumber Company. I don't know if it was Mr. Jefferson who testified here. I addressed them as a whole and stated the facts to them, that our men would not handle that material, that we had trouble on it, and that we had now undertaken the precaution to run that job in the right manner.

Thereafter, work was performed on it by union men. It was put in the Aeme Mill, that is Munson Brothers. The material was run through a sanding machine. It takes away the rough stuff—makes the surface smooth and a more finished product. It could not deteriorate it in any way. Our men handled the material.

Reference in the minutes of September 1, 1939, about the use of display cards and home industry, referred to the following: There was a piece in the

(Testimony of Charles Helbing.)

press a great many of our men were out of employment—I would say a couple hundred at least—and we found it in the press, this was a ghost city, and I thought it to be good business policy to boost this locality, instead of running it down, and I went through the sales places, supply houses that handled our material, and asked them to work and purchase union-made goods; that is, our material in this locality, because our men were out of work. That a dollar here was a dollar saved, making an actual boost for the community, and in this travel I put out this booster-card, and some that I met had told me; he says, one of the Chamber of Commerce people are here giving the same kind of a talk that [749] you are delivering now, and they agreed with the proposition and I had very few who objected to it. There was nothing in it that was hurtful, only for the good of the community and obvious benefit to get the men off the street—that is the main object I had in view.

I went to Symon Bros. for that same purpose. I remember meeting Mr. McNamar. I went in there to give him a sales talk on San Francisco products. It is hard to recall the conversation. You just go in and explain about the situation existing in this city and of the benefit there would be if they purchased from the city and help the city along. I never stated in substance or effect they would be required to buy here. He did promise, he says he would look the matter over and give it thought.

(Testimony of Charles Helbing.)

That was the end of that visit. I gave him ample time to think things over, and the second time I went there, the answer that he gave, he was very blunt and turned to the side and kept on working, you know, as people do, and I sat there and got somewhat dumfounded, and I finally said, "Is that your answer?" And he said, "Yes," and I walked out. Up to that point, I did not investigate the type of material Symon Bros. were turning out. At a later time, I should judge it might be a month or so later, I saw unloaded a car that contained sash, and naturally being interested, I investigated and found that it was Symon trucks that were loading the sash. This sash was not union-made and knowing that this material was unfair, I took it up with both Councils, and the suggestion was, why not pay the gentleman a visit and see if we can't straighten these matters out.

That was the third visit, when Messrs. Ryan and Ricketts accompanied me. These sash came into Symon Bros., were unloaded from the car on a truck and delivered to Symon Bros.—nothing stopped about it. The approach was for union-made material in regard to these three meeting together. There was nothing said relating to union-made doors. He might have said that they had union-made doors, but we never protested against that at [750] all. We never objected to any union-made material he had. Objection was to the non-union sash, and he said, after we talked to him at

(Testimony of Charles Helbing.)

some length, he would give the local mills a chance to figure the work and we let it go at that, and that was what it amounted to.

I was business agent in the early part of 1936. We were enforcing the stamp at that time. That was prior to the 1936 contract. There was not any difference in my activities so far as the enforcement of the stamp then and under that contract. Promotion of the campaign of local products had nothing to do with the contract at all—it was simply to boost up the city and bring it back to where—some people said it was going dead. There was no discussion between me and any employer representative when we were formulating our policy. This plan was formulated between Mr. Ryan and myself. I did not ever make, nor am I aware of any oral or so-called secret contract between myself or any union with any employer, relating to restraining out of the State material from coming here.

“Mr. Howard: Q. Were you acting with intent then in any way than to carry on your objects of labor and the acquisition of proper working conditions in your activities here?”

“Mr. Howland: Objected to on the ground that intent is immaterial.

“The Court: Sustained.

“Mr. Howard: I presume it is not necessary to offer that same offer of proof, your Honor, in regard to the other testimony, for example, an offer of testimony that might be offered here relating to this objection?”

(Testimony of Charles Helbing.)

"The Court: I do not know what you are referring to.

"Mr. Howard: If your Honor will recall, I was somewhat troubled in connection with this line of testimony on the previous occasion that there might be the same objection, and I made an offer of proof with respect to the intent with which these men were acting.

"The Court: I think the intent is immaterial.

[751]

"Mr. Howland: We have an understanding that it is not necessary to offer this same thing through each witness.

"The Court: I do not know; I hardly think so.

"Mr. Howard: Your Honor's ruling would be the same?

"The Court: Yes.

"Mr. Howard: That is all."

Cross-Examination

By Mr. Howland:

I was a business agent of the union in 1936 and again in 1939. During the intervening years 1937 and 1938, I was delegate to the District Council, from June, 1937, to June 1938. I didn't act in any other representative capacity. I acted on negotiating committees in 1938 when that revised agreement was made. I signed the 1938 contract. It was revised after the arbitration award. It was the contract that the Brotherhood rejected, section 2 in the

(Testimony of Charles Helbing.)

contract. This contract, I had nothing to do with it, in negotiating it or anything else, just merely that this paragraph was placed in by the request of the Brotherhood. It won't be changed. That is all I had to do with the contract. I signed the contract on behalf of my Local. I had nothing to do with Exhibit 175, the 1938 contract. I took part in the negotiations relating to a contract. A contract did not result. In the early part of 1936 and until I became ill, I was active. When the contract was made I became ill and never finished the contract at all. I think there was Kelly and Sammet on the committee with me. I signed the 1935 contract. I helped negotiate in 1936, was taken sick and never finished it.

I was elected business agent in the month of January, 1939, and continued to act during the entire year. I was not the only business agent. Wilcox was business agent at the time. He was elected the June prior, for a period of a year. I was re-elected in June, 1939. From January to June the Union had two [752] business agents. When Mr. Wilcox's term ended in June 1939, I was reelected business agent and he was not.

A considerable number of independent mills and dealers having the same contract during 1938 as the Association had. The contract was negotiated in 1936. It was a two-year contract. I am speaking of a contract negotiated between the unions, cabinet manufacturers institute, the associated mills,

(Testimony of Charles Helbing.)

and other employer associations. The same contract in effect was then negotiated and executed with all of the independent firms referred to. It is true the independent firms were called upon to sign that contract, after the union dispute with the association. I couldn't say if it was likewise true with respect to the 1938 contract. I was not on the job. I was working at tools.

The circumstances which gave rise to the minutes of April 19, 1938, involve firms that were violating the contract. It was the firm I was working for—Thompson Mill Sash and Door.

With reference to the minutes of May 9, 1939, the T&G at San Mateo, it is correct that later investigation revealed that material had not been rerun. I am not responsible for what the secretary says. It was not rerun. I didn't write the minutes.

With respect to the minutes of May 16, 1939, Greater City Lumber Company, I said there was material there that was a mixture of union-made and non-union-made. I do not know from where that material came. I did not know at the time. It was jambs, door stock, jamb door stocks. They were completely manufactured jambs, were all ready to be used.

I never made any demand on Symon Bros. I did not tell them they would be required to buy locally. If you are doing business with anybody you cannot tell them, you have to ask them to do it. I said in the Local that they should be put on the

(Testimony of Charles Helbing.)

unfair list, and along with the Councils, who refused to take action until they investigated the matter, or straightened the matter out, [753] because this stuff was unfair that was coming in. I did personally recommend that Symon be put on the unfair list. That was done in the meeting of the Union, after the delivery of the unstamped material to his place of business. I don't know where it came from. I wasn't told it was Northern sash when I called at the office of Symon Bros. I don't know whether it was or not—that was immaterial to me, because it was not union. As a result of my recommendation, the Local Union asked that they be put on the unfair list. That resolution was passed on to Bay Counties District Council. I think Bay Counties District Council approved the resolution, and also recommended Symon be put on the unfair list. The action of the District Council was then referred to San Francisco Building and Construction Trades Council. I can't recall the meeting of the Executive Board of San Francisco Building and Construction Trades Council, at which Mr. Symon, or some representative of that concern, was summoned to appear. Mr. Westby is our regular representative from the local who attends that Executive Board. I can't recall exactly whether I was present there with Westby or not. I think that they took the matter up and it was to wait on Symon Bros. I can't remember what the outcome of that was, to be really accurate on

(Testimony of Charles Helbing.)

it. I was present at the meeting of the Local Union on December 12, 1939. I guess I made some reports to that meeting. I guess Westby made the statement referred to in our minutes of December 12, 1939.

“‘Building Trade Executive Board. Brother Westby reported Symon Bros. were notified to appear before this Board and show cause why they should not be placed on the Unfair List. Symons agreed to use local mill work and go along with the program. Brother Helbing also spoke on this case and stated Symons will ask for local bids.’”

I recall I also spoke on the case and stated, “Symons will ask for local bids.” [754]

During my employ as business agent, during the year 1939, I never told any lumber dealer in the City, that milled material from the North was not allowed in San Francisco. As long as it contained a label it was useless to tell them that. I never made a statement of that kind to Posey Lumber Company. I made a statement recorded in the minutes of Local 42, the meeting of February 14, 1939, which reads, “carload of milled material from the North for the Posey Lumber Company, told these people that material was not allowed. They promised not to have any more shipped into San Francisco.” That was trim material that was going to a furniture concern, and I told them that as far as work going to the outside, the carpenters would not put this material—if it didn’t have a stamp. It

(Testimony of Charles Helbing.)

was unstamped material, and I never went any further with that material, because it didn't concern our workers, or the carpenters, directly. It was going to a furniture place and was not disturbed, and I asked them the question if they would, in the future, go along with the proposition of using union-made material. I didn't ever tell Posey Lumber Company to have that same material rerun locally, I am absolutely sure.

I didn't make the statement shown by the minutes of the meeting held April 4, 1939, "Posey Lumber Company received a carload of knotty pine; told to have it rerun." I can't recall a statement of that kind.

During the year 1939, in addition to the matter at Coos Bay shop, I think I had occasion to go to San Mateo and check up on material, besides the Coos Bay transaction. I do not recall the concern involved. There is a West Bay Lumber Company in San Mateo, or Redwood City, in San Mateo County. It is in the jurisdiction of Local 42, and it ain't. It is according to the material, when you are looking for material that is unfair and tracing it, then we follow through: That firm employs members of the [755] Brotherhood locals, I don't know whether they are all 42 or not, I couldn't say whether any member of Local 42 are employed by West Bay Lumber Company.

Simmons is a business agent of parts of San Mateo County—they have it divided. I think he is

(Testimony of Charles Helbing.)

with Local 162. He is business agent of both a carpenters' local and millmen's local in that locality, as a rule. I don't know whether Simmons was along or not, in checking material at the West Bay Lumber Company. I went down there. I just can't recall exactly what that was. I know I paid a visit to him in reference to material and asked him, as he had a stamp there, to purchase all union-made goods so we would not have confusion in regard to filling a contract. That was the reason I was on the job. Knotty white pine might have been included in the material I checked up on him. They have made knotty white pine in the San Francisco Bay Area. I have made it out of knotty white pine. It is paneling stock. I made lots of knotty white pine at Thompson's mill, where I was working, in the city. I never checked on any material at the direct request of the Secretary of the Cabinet Manufacturers Association,—Mr. Ennes, I am sure of that. I do not recall making the statement referred to in Exhibit 6, minutes of Local 42 January 23, 1940.

“ ‘Had a phone call from the Secretary of the Mill Association in regard to T. & G. flooring going in on a warehouse on Third Street of the Safeway Store; Cahill has the job and agreed to go along,’ ” as written. .

~ During the year 1939, I had correspondence addressed to the local union that was turned over to me to take care of. From time to time I contacted people who had written to the union, and rather than writing them a letter would go and see them.

(Testimony of Charles Helbing.)

I don't know whether I called on Jones Hardwood Company in December, 1939. I remember calling on the Jones Hardwood Company—I saw Jones, himself, I think. I know he was connected with the firm. He addressed a letter to the council, I believe, and it was turned over [756] to me and I went there in person to talk to him.

I guess that Exhibit 11-8 is the letter. Thereupon, said Exhibit was read as follows:

“ \* \* \* This is a letter on December 28, 1939, from Jones Hardwood Company, Nelson E. Jones, Manager, addressed to the Secretary of the Carpenters' Union, 200 Guerrero Street, San Francisco:

“ ‘Dear Sir:

On a number of instances, where we have had orders for doors manufactured by the Roddis Lumber and Veneer Co., Marshfield, Wisconsin, it has not been possible for us to complete delivery due to some restriction that your Union has made or imposed.

“ ‘Will you please advise us if this policy is still in effect.

“ ‘Also, it has been a practice to bring Ponderosa Pine into this market in some grades, run to certain patterns. Several months ago we unloaded a car of this material and were paid a visit by one of your delegates, who advised our foreman that this material constituted ‘hot cargo’ and that our men could not handle it.

(Testimony of Charles Helbing.)

“Will you please also advise us if this policy is still in force?

“Yours truly,

JONES HARDWOOD COMPANY,

NELSON E. JONES,

Manager.”

I didn't tell Mr. Jones that policy to which he refers in his letter was still in effect, in those words. He spoke about the doors. It was a patented door and these doors were to be passed by the Carpenters on some particular job here, which I didn't know anything about, and when he asked about that policy I told him when that time arrived and he handled that door, we would take the matter up. I am talking about the Roddis door. That is what he refers to as unfair or unstamped material. I don't know where it came from. The subject of the matter was that I didn't think our union men would handle that material, it had to be union goods. He didn't say that material had come from the North, [757] Oregon and Washington. He just merely mentioned that Ponderosa pine, and I really don't know whether it comes out of this State or Oregon or Washington. I know I have occasion to run at the present time pine molding into pattern on the machine I operate. That is my line of work.

I knew of the existence of a clause in the Carpenters' contract known as the non-stoppage of work clause. I know such a clause exists. I am not defi-

(Testimony of Charles Helbing.)

nite on whether that clause applies to both union- and non-union-made material. Source of my information is the way the contract reads. In regard to the membership, a contract might be made, but still you have the membership to contend with in regard to running non-union material.

Thereupon, defendants introduced in evidence Exhibit No. 73.

"Agreement Between Cabinet Manufacturers Institute of California, Northern Division, and the Bay Counties District Council of Carpenters

" "This agreement entered into this first day of May, Nineteen Hundred and Thrity (misspelled)-eight between the Cabinet Manufacturers Institute of California, Northern Division, and the Bay Counties District Council of Carpenters, In order to establish the Wages, Hours and Working Conditions of carpenters employed on construction and commercial fixture work, in the Counties of San Francisco, Alameda, San Mateo, Marin, Witnesseth that the two parties hereto agree to the following:

### WORKING CONDITIONS

" "1. Eight Hours will constitute a day's work except as otherwise noted. Where part of an eight hour day is worked pro rate rates for such shorter periods shall be paid.

" "2. Five Days, consisting of not more than eight hours [758] a day, on Monday to Friday inclusive, shall constitute a week's work.

(Testimony of Charles Helbing.)

“ ‘3. Wages. The rate of wages for Journey-men Carpenters shall be One Dollar and twenty-five cents (\$1.25) per hour for employment during regular hours. Nothing in this section shall prevent an employer from voluntarily paying a higher scale.

“ ‘4. Overtime shall be paid as follows: For the first four (4) hours in addition to the first eight (8) hours, time and one-half. All time thereafter shall be paid double time. Saturdays, Sunday and Holidays from twelve Midnight of the preceding day shall be paid double time.

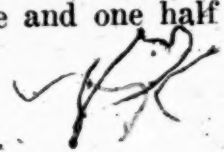
“ ‘5. Where Two Shifts are worked in any twenty-four (24) hours, eight (8) of said hours to be between 8 A. M. and 5 P. M., shift time shall be straight time. Where Three Shifts are worked over time equal to one hour's pay shall be paid on all shifts.

“ ‘6. All Work except as noted in Paragraphs 5 and 9, shall be performed between the hours of 8 A. M. and 5 P. M.

“ ‘7. Recognized Holidays shall be New Year's Day, Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day, Christmas Day.

“ ‘8. Men ordered to report for work, for whom no employment is provided, shall be entitled to two (2) hours pay.

“ ‘9. In Emergencies, where premises cannot be vacated until the close of business, men then reporting for work shall be paid time and one half



(Testimony of Charles Helbing.)

up to midnight. Any work performed on such jobs after midnight shall be paid double time.

“ ‘10. Only Two Classifications of mechanics are recognized in the crafts, journeymen and apprentices.

“ ‘11. ‘Journeyman Carpenters.’ The term of ‘Journeyman Carpenter’ as used herein, means an employee who is qualified by experience and ability to perform work with carpenters’ tools, or such other tools as are necessary in the performance of carpenter [759] work. All work performed with carpenters’ tools shall be done with journeyman carpenters and/or apprentice carpenters; except the following may be done by either carpenters or laborers at the option of the employer:

“ ‘(a) Stripping concrete forms. (b) Removing of scaffolds. (c) Removal of material and man-hoisting towers. (d) Wrecking for alterations and reconstructions. (e) Placing and removing of concrete runways. (f) Distributing and handling of building materials from point of delivery to point of installation. (g) Drilling holes in brick or concrete for attaching the work of carpenters. (h) Removing of sidewalk pedestrian safeguards.

“ ‘12. ‘Apprentice Carpenters.’ The term ‘Apprentice Carpenter’ as used herein, means an employee undergoing a system or course of training in carpenter work, whose age when starting his apprenticeship is over eighteen (18) but not over twenty-two (22) years. The term of apprenticeship shall not exceed a period of four (4) years.

(Testimony of Charles Helbing.)

“ ‘13. Apprentice Ratio. Apprentices shall only be employed in the ratio of one apprentice to each four journeymen.

“ ‘14. Contracting. No work will be let by piece work, contract or lump sum direct with journeymen or apprentices, for labor services.

“ ‘15. Tools. Carpenters and apprentices shall furnish their own tools, but shall not furnish saw horse, ladders, mitre boxes, electric drills, or any kind of power operated machines or saws.

“ ‘16. The employment of Handicapped Workers shall be as regulated by the Conference Board hereinafter provided for.

“ ‘17. These ‘General Working Conditions’ Wages and Hours shall be effective on all work in the Counties of San Francisco, Alameda, San Mateo and Marin. [760]

\* \* \* \* \*

“ ‘18. In order to bring about general recognition and enforcement of these ‘Working Conditions’ Wages and Hours, the Institute and the Council shall set up a Conference Board of six (6) members; three (3) to be appointed by the Institute and three (3) to be appointed by the Council.

“ ‘(a) To establish the general recognition and enforcement of the Wages, Hours and Working Conditions of this Agreement. (b) To hear and adjust disputes or differences that may arise in the enforcement or interpretation of this Agreement.

(Testimony of Charles Helbing.)

(c) To make such provisions for the employment and regulation of Apprentices as it may consider necessary. (d) To promote the mutual interests of the parties of this Agreement and the Building Industry generally.

"19. There shall be no limitation of the employer as to whom he shall employ or discharge, except that any employee doing carpenters work (misspelled) shall be, or within thirty (30) days shall become a member of a local Union affiliated with the Bay Counties District Council of Carpenters, excepting Superintendents not working with tools.

"20. All complaints of alleged violations of this Agreement and Working Conditions, shall be referred to the Joint Conference Board and its decision shall be final."

"Now, 21. This is non-stoppage clause that they say is not in the agreement:

"In the event that disputes or disagreements arise between the parties hereto and/or other groups in the Building Industry that threaten to adversely affect the interests of either party to this Agreement, no action will be taken by either party to this Agreement that will halt or interrupt the orderly conduct of business, but the matter will be referred to and dealt with by the Joint Conference Board.

"22. On February 1, 1940, negotiations shall be commenced between the parties hereto for an

(Testimony of Charles Helbing.)

Agreement for Hours, Wages [761] and Working Conditions for the period from May 1, 1940 to May 1, 1941, and in case these negotiations do not result in a settlement of all such points under discussion by March 16, 1940, then an Arbitration Board shall be selected as follows:

“(a) From a list or lists submitted by the Institute, the Council shall select one (1) man. (b) From a list submitted (misspelled) by the Council, the Institute shall select one (1) man. (c) In the event either party cannot select an arbitrator from the first list submitted, then other lists shall be submitted until selection is made. (d) These two selections shall become members of the Arbitration Board. (e) From a list or lists to be submitted by both the Institute and the Council a third Arbitrator, satisfactory to both parties (misspelled), shall be selected. (f) No member of the Arbitration Board to be connected with the Building Industry. (g) This method shall maintain until all three members of the Arbitration Board have been selected. (h) This plan of selection of Arbitrators may be altered or changed by mutual consent of the Joint Conference Committee.

“23. It is mutually agreed between the parties signatory here-to that in case of arbitration, any other employing organization which has in effect and is observing an Agreement with the Bay Counties District Council of Carpenters, or which is observing this above Agreement, shall be given

(Testimony of Charles Helbing.)

the opportunity of submitting briefs, in the arbitration proceedings.

“ ‘In case of the submission of said briefs, written notice must be served to the undersigned of the intention to submit briefs at least one week prior to said submission. The above arrangements for the submission of briefs by the above first named class of employing organization shall aonly (misspelled) be in effect providing such employing organization has a similar arrangement in their Agreement with the Bay Counties District Council of Carpenters, providing for such submission of briefs. It is, however, [762] mutually agreed and understood that in case any of the above described other employing organizations request the permission to submit briefs, this privilege shall only be afforded them providing they signify in writing their willingness to abide by the results of the arbitration in which they submitted briefs.’

“24 is the only part which was heretofore read:

“ ‘No Carpenter under the jurisdiction of the Bay Counties Distieict (misspelled) Council of Carpenters shall work on the installation of commercial fixtures, store fronts, or the structural work incident thereto, unless the contractor undertaking the work has subscribed as a member of an Employers Association or as a Contractinct’—this may be a matter of dispute, as to what this word is, but it is quite clear it is ‘Contracting’—‘Contracting firm, to an Agreement comparable hereto.’

(Testimony of Charles Helbing.)

"The Court: It is undoubtedly.

"Mr. Faulkner: Would your Honor care to look at it?

"Mr. Howland: It is stipulated that means 'Contracting.' I think obviously it is a typographical error.

"Mr. Faulkner: In your examination of Mr. Ryan it seems to me there was some importance attached to that word, but you stipulate that it is a mistyping and that the word intended to be typed is 'Contracting'?

"Mr. Howland: That is it.

"Mr. Faulkner: The last paragraph is as follows:

"25. This Agreement shall become effective on the first day of may (misspelled), nineteen hundred and thirty-eight and shall remain in effect until the first day of May Nineteen hundred and forty, provided that on or before the first day of February, Nineteen Hundred and thirty-nine, either party may give notice in writing to the other party of a desire to negotiate a modification of wages and hours during the period from May first, Nineteen hundred and thirty-nine to May first Nineteen Hundred and Forty, [763] at which latter time this Agreement will expire unless continued by joint agreement of the parties hereto. In the event such negotiations are called for and do not result in a settlement of such wages and hours under discussion by March sixteenth, Nineteen Hundred and

(Testimony of Charles Helbing.)

thirty-nine, then an Arbitration Board shall be set up to decide all points not agreed upon as provided for under Section 22 hereof.'

"The signers of the agreement are Cabinet Manufacturers Institute of California, Northern Division; J. G. Ennes, Manager, Bay Counties District Council of Carpenters, D. H. Ryan, Secretary.

"Signed in San Francisco, California

"Thid (misspelled) 6th day of May 1938.'

"This at one time bore the number 73 for identification. I assume it will bear a letter.

"(The agreement was marked 'Defendants' Exhibit 2-F.')

"Mr. Howland: I should like at this time to offer in evidence a similar contract to that for the year beginning November 30, 1937, which has been marked Government's Exhibit 114-25 for identification. I have been following Mr. Faulkner as he read this previous exhibit and I might say that with the exception of the typographical errors or misspelled words, that this paper is identical, word for word, with the one which you read, except only paragraph 25, the last paragraph, which has to do with the term for which the contract will be effective.

"The Court: The contract is between whom?

"Mr. Howland: Between the Cabinet Manufacturers Institute of California, Northern Division, and Bay Counties District Council of Carpenters.

"The Court: It is dated when?

(Testimony of Charles Helbing.)

"Mr. Howland: November 30, 1937, and paragraph 25 says it shall be effective from the first day of December, 1937, until May 1, 1938. [764]

"Mr. Faulkner: You might as well read the paragraph exactly. We have no objection.

"The Court: It may be admitted.

"Mr. Howland: Paragraph 25 is the only one where there is any change, and it reads as follows:

"25. This Agreement shall become effective on the first day of December, nineteen hundred and thirty-seven, and shall remain in full force and effect until May 1, 1938, at which time it will expire unless continued by joint agreement of the parties hereto and shall not be retroactive, but shall be applicable to all work except where contracts have been signed or where bids have been submitted and opened prior to the effective date."

"The Court: It is admitted.

"(The agreement was marked 'U. S. Exhibit No. 114-25.')

"Mr. Faulkner: The same signers?"

"Mr. Howland: J. G. Ennes for Cabinet Manufacturers and D. H. Ryan, Secretary, for the Bay District Council."

#### Redirect Examination

By Mr. Howard:

I recall testifying I don't know whether I attended the meeting of the Building Trades Executive Board at the time the question of Symon Bros.

(Testimony of Charles Helbing.)

being placed on the unfair list was presented. The minutes referred to were of a meeting of Local 42, and reported that I spoke on the Symon's case and stated Symon will ask for local bids. I do not remember of attending the executive board meeting. My statement was made at a meeting of Local 42. It seems to me the executive board meets on Tuesday and so does the Council meet on Tuesday. That minute has no bearing on whether I was present at the executive board meeting or not. The committee meets in the same building. There could be a possibility I attended both meetings, but I can't recall it.

San Mateo mills and shops have the same agreement that involve unions, with the same provisions as to enforcement. With [765] reference to the Safeway Store job and some telephone conversation with the secretary of the mill association, referred to in the minutes of Local 42 of January 23, 1940, that job was not already let to some contracting party involved in our contract. Gaetjen was doing this job. We got this out of the Architectural report of Pacific Builders. We got our information from that and found out where the contracting party is, and if we find there is material to be used we contact the party and ask him if he would patronize local material or union-made material, and sometimes they would concede it and sometimes not, but in this particular case I had asked Mr. Ryan, Secretary of the District Council, after reading the Pacific Builder, if he would contact the

(Testimony of Charles Helbing.)

party in regard to that material, knowing it would require heavy flooring which should carry a label in our district, and this party agreed he would go along. He did ask Ryan, Ryan said to me, if he had to do it and he said, "Well, no, it was not that you have to do it, but you do it at the request of the millmen. There are parties out of work, and we would like to have that work." There was not any question that I know of of a bid having been let to anyone other than local people in that Safeway job. I didn't ever hear it was not going locally. We see these reports, we see whoever the people or shops are in this Builder, and then we contact to see what the material is that he uses, and ask him if he will not go along with local-made material. There was no suggestion from anyone this was not to go locally at any time. The hostility, we were trying to straighten out a contract, and he did volunteer, there was some sarcasm about this particular job, I believe, and I said, "That job has been taken care of," and I presume his mill did not get it, because it was going to some place else. I said that job was going locally. There was no question of any outside bid having been negotiated before.

#### Recross-Examination [766]

By Mr. Howland:

I told the firms I visited, as long as it had the union stamp, if it was union-made, it was okay. I didn't ever tell any of the officials of Symon Bros.

(Testimony of Charles Helbing.)

they had to have the work done locally. The only thing I used in telling lumber dealers was, that our union members would not work on this material if it was brought in, that is, if it was not labeled material. I don't recall having told anybody what the consequences would be if they persisted in bringing in material from outside the Bay Area, only to the effect that our men would not use that material.

During the time I was business agent, during 1939, I spent time finding reports that non-union material was being used in the locality. That is where some concerns, jobbers, who purchased union-made material would also sandwich in with the other and make it appear it was all union, which confused the carpenter. I did not find out where this material was coming from. Of course, we knew it came from out of, from away from the city, so far as that is concerned. I spent time finding out where—not exactly where it came from; I would be looking out for non-union material. I didn't spend time finding out where it came from, in that way.

I made the statement referred to in the minutes of the meeting of Local 42, of September 12, 1939, where the following appears:

“ ‘Spending considerable time finding out where the millwork is coming from that is not made in San Francisco. Having meeting with some of the Homebuilders tomorrow, routine.’ ”

(Testimony of Charles Helbing.)

This millwork came from San Francisco, was trailed back, after finding it was non-union, to a concern that was operating in San Francisco, and I went to that concern to get the real facts on the matter, and afterwards this concern signed up and went along. We gave them the stamp. I checked the material that was non-union made. I checked the material regardless of where it [767] came from. I did check the material, that is true, of course, to find out whether it was union-made or not. I did try to find out just where the mill was located, or the identity of the mill from which it came.

I cannot recall the firm on Bay Shore referred to in the minutes of Local 42, December 12, 1939, where the following statement appears:

“B. A. Helbing reports Brother Westby doing picket duty and found two consignments, one firm will have his stuff rerun, other firm on Bay Shore also agreed to go along and have their doors re-run after convincing these people about what the outcome would be.”

There are several firms on Bay Shore. There must be close on to around 8 or 10, I guess. There is some firms that operate mills and some are jobbers, warehouses, handle material, supply houses, you would call it. West Bay Lumber Company is on the 101, Camino Highway. I must have made the report, “The firm on Bay Shore also agreed

(Testimony of Charles Helbing.)

to go along." What firm that is it is hard to say, there are quite a few.

### Further Redirect Examination

By Mr. Howard:

With reference to non-union materials, I would merely give them the fact that I don't believe they will be able to handle the material, because the carpenters would not use the material. Union men would not use it because, more or less, these concerns sandwich it with union-made goods and the other. That was the reason I made it my business to find out just what the source of this material was. You would find non-union material mixed in with the other and then you would get your directions perhaps from the floor of the organization, or a carpenter might tell you where the load came from, and you would go to that concern and talk to them and try to get them to handle local material. [768] When running back non-stamped material, I was desirous of finding out who had put it out without a stamp—that was the idea. The material was mixed. These yards would have stuff run with the stamp on it, and then would sandwich in the other stuff that come from some other source that didn't have the stamp on it, and that would create confusion. That was on the floor of the organization continually coming up. They would say the millmen were too lazy to put the stamp on the material. We don't know where it might be coming from. They

(Testimony of Charles Helbing.)

were continually trying to get the millmen in the locality to stamp their material. Later, we found where the source of that was. They were mixing the material with the stamped material and unfair material. When I was investigating the source of the material, I was investigating whether it was a non-union mill or a union mill.

#### Further Recross-Examination

By Hr. Howland:

It must be mixed material that this firm on the Bay Shore, I can't recall the kind of material, or where it came from. If I knew the firm—as I said before, there are about 8 or 10 concerns along there handling this, supply houses, and so on and so forth.

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#### WALTER C. O'LEARY

called as a witness for the defendants, (was duly sworn and testified as follows:

#### Direct Examination

By Mr. McKevitt:

I have been working as a millman 44 years, since September, 1897, and with the tools until 1934. Since then, I have been an official of my Union. I belong to Union 550 in Alameda County and have for 39 years, since October 1902. For seven years I have been business agent. I have heard the testimony of various witnesses. [769]

(Testimony of Walter C. O'Leary.)

I had an interview with Mr. Wine. He phoned and identified himself over the phone, and said he would like to interview me on the mill situation, and I asked him, "Where shall I come, shall I come over to San Francisco?" and he said, "I will come over there, and where can I see you on the Oakland side?" I made a date to meet him there. It is the only interview I had with Mr. Wine. There was a discussion there, as Mr. Wine has testified. He opened up the mill situation, and I told him that we had a union condition in Alameda County, good wages, good conditions, and we were interested in keeping those conditions. I told him we objected to materials coming in there made at lesser wages than ours, either non-union or union, but our General President, Mr. Hutcheson had taken the stand that if an article bore the union label, no matter where it came from, that label had to be recognized the same as a dollar- or five-dollar bill. I introduced Mr. Hutcheson's name into the conversation.

Reference to the Aladdin Company was in relation to the carpentry work. I told him what would happen to the millwork, we wanted it with a label on it. He discussed the Aladdin houses, and in a frank discussion with him, I told him just about what I thought would happen. There is a distinction between carpentry work and millwork, and if the carpentry work was done under conditions at a less scale than here, the carpenters would object to it.

(Testimony of Walter C. O'Leary.)

"Q. Do you know whether the Aladdin Company was union or non-union?

"Mr. Zirpoli: We object to that.

"The Court: Sustained."

I understand the Aladdin Company makes ready-built homes. They eventually are built on the lot. They arrive with rafters and everything cut to length. The millwork, doors and sash, and, I think, the flashing for the roof is in it, nails and roofing paper and [770] everything is there, except perhaps some plumbing. The assembling of those materials is carpentry work. Component parts of these ready-built houses do not come from any of the mills here. There would be no work done on them by any of the mills locally. If work was done by union men, the carpenters are members of various carpenters' unions. They are not members of 550 or 42. There are four or five carpenters' unions operating in this Bay Area. In Oakland there is 36, 1158, 1473, 194, a union in Hayward, five in Oakland, one in Richmond, 642.

In discussing any prospective work that might be required on Aladdin homes, I told him local carpenters would object to them coming in with the carpentry work done at a lower scale than they had here. It would be like bringing a \$6 carpenter into the locality and doing the work here; that they would not do it; would object, and that they probably would have to send their own carpenters along to construct the houses—that was my answer to him, if I remember correctly.

(Testimony of Walter C. O'Leary.)

I had conversation with Mr. Wine concerning Mr. Stewart of Symon Bros. It related to an incident at Symon's. Mr. Symon deals in second-hand mostly, and some new material. I checked his storage shed there—it can't be described as a warehouse, and found sash that was not union-made. First, I think it was doors. The second time we had changed the exempt list to the extent of taking the sash off it, they had doors that came without the label, and the next time it was sash. I told him he had some hot stuff in his warehouse. He wanted to know what I meant. "Well, you got some stuff in there that came without the label on it, and we would like to have you go along and have it made union, and locally if possible." That is the conversation with Mr. Stewart related by me to Mr. Wine.

I know Mr. Peel. I met him twice. I believe they rang me up from Symon Bros. and put him on the line, and we made a date [771] and he came down and met me at the Labor Temple. I think he represented the Central Door & Lumber Company, in Portland, and Albany Door Company, at Albany. Those are the two companies Mr. Peel represented as salesman and broker, so he said. I don't recall any other principal he represented in the North. He wanted to know what my objections were to handling their products. They were not union.

(In regard to Symon, I think there was a discussion about bringing in a car of not union-made

(Testimony of Walter C. O'Leary.)

stuff. He asked me what action we would take and I told him we would use persuasion wherever we could. He said, "What other action will you take?" I said, "It depends on the circumstances." "Would you put a picket out?" I said, "We might."

We did not at any time at Oakland put a picket line on any material that bore the union label. We didn't advise anybody over there we picket material that bore the union label, no matter from whence it came.

Mr. Wine did take notes of the discussion. He had a sheet of yellow paper and wrote down as I answered his questions. It seems to me I signed a statement at that time. I don't know. It occurred to me when he left that my word was as good as his at the time. If I didn't sign it—that is the question—that is going through my mind. I couldn't say definitely.

I left two copies of an agreement with Mr. Stewart, of Symon Bros. It was our regular agreement in effect at that time, that I had left with numbers of people around the Bay Area. I left a 1936 agreement, which included the exempt list. They generally wanted to know what the situation is and would say they had some doors on hand that didn't have the label. I said, " \* \* \* What are they?" When we ask a man that question, I gave him one of those and they will look them over and say, "What can we do with the stuff that doesn't

(Testimony of Walter C. O'Leary.)

have the label?" They want to know where [772] they can get union-made stuff and they ask, "Where can we get the material with the label?" We have a number of them in mind and tell them, and they probably would put it down. No particular list was given Mr. Stewart. He asked me the question where he could get union material. I would say the nearest to my recollection would be the P. M. Company, the Eureka Mill, in San Francisco, Metheny Company, Hogan, Western Door, Boorman Lumber Company. I told him what he generally wanted to know—no list was made up by me. He jotted down the names. I didn't tell Mr. Stewart I would not permit him to handle material with the union label on it.

I recall the testimony of Chris Wininger. He represented a lot of lumber people up there, but Ewauna Box Company is one of them. As I recall, there was some molded edge 1x12 knotty pine tongue and groove, set up on saw horses at Sheehan & Ballard's yard, and it did not have a union label, and I proceed to make it known by tacking a sign, I think it was, "Hot Cargo." That was a popular slogan then on non-union material. All of the matter discussed with Mr. Wininger was because it did not have the label. I didn't ever tell Mr. Wininger my people in Alameda County would not handle material with the label.

The places of business of Mr. Carrick and Mr. Kleier are at El Cerrito, right across the street

(Testimony of Walter C. O'Leary.)

from one another. Carrick's is one section of the East Bay Area, where I ran into this car of lumber on the spur track at Stege, and found material that was not on the exempt list, round-corner pieces. I had had considerable trouble with Mr. Carrick before that, and in order to impress him a little more strongly, put the picket on first and went to see him afterward. I met him in his lumber yard and told him he had some stuff in his car not on the exempt list and it was non-union, it should have the label on it and didn't have it.

I had a discussion with Mr. Kleier. He had some knotty pine in the shed, and the material that was on these horses at [773] Sheehan & Ballard's it developed later were consigned to him. That is the way he comes into the picture. There was discussion with Mr. Kleier generally in regard to sash and doors. We were looking his place over and spoke to him about getting union-labeled doors, as required, mentioning also those that were on the exempt list that were being handled by the carpenters. About the time he mentioned we were in there, he did have local made stuff with the label on it, and doors from Tacoma with the label on it. I am certain he had doors with the label on as well.

Mr. Blackman's place of business is in Melrose. I met him in reference to some material he was unloading from a car that was not on the exempt list and did not bear our label.

All of the differences with Messrs. Carrick,

(Testimony of Walter C. O'Leary.)

Blackman and Kleier, come by reason of the fact that the material discussed was without the label. I didn't tell either or any or all of them my group would not handle material that bore the union label.

Matched T & G means there is a tongue on one end and a groove on the other, the same as the groove on one side and tongue on the other. The T & G described in the minutes of Union 550, dated January 27, 1938, was not on the exempt list of the 1936 agreement, or the 1938 agreement. There is T & G that is on the exempt list. It is not this 2x6 matched. I don't know of any oral agreement, secret or otherwise, between my union or any other millmen's union, concerning millwork or patterned lumber coming in from anywhere outside of the State of California.

#### Cross-Examination

By Mr. Zirpoli:

The statement for January 27, 1938, "Business Agent O'Leary told of matched end T & G 2x6 coming in from the North in violation of our agreement," could be what I said. I could have said that and probably would have under the circumstances. I would have said that was in violation of our agreement. The [774] agreement that contains that exempt section that was in existence in January, 1938. I was complaining about this matched end T & G coming in in violation of our agreement, without the stamp. It says, "Motion

(Testimony of Walter C. O'Leary.)

passed that secretary notify the District Council and Building Trades Council that we are opposed to the importation of matched end T & G, and ask their help to stop contractors from buying or using same which is in direct violation of our agreement."

Mentally, I could not say, but I would say this is a correct account of what happened at that meeting that night, in keeping with our agreement. Reference to direct violation of our agreement was the one that was in effect at that time.

I was business agent for millmen's local 550, from September, 1936, to July, 1940. I am familiar with clause 16 of the 1936 contract, Exhibit 131. The names that appear on the exempt list I testified I gave Mr. Carrick, Mr. Peel and Symon Bros., was a copy of exempt list from that agreement. Exhibit 140 is taken from the exempt list in the contract of 1936. We often discuss that clause at the meetings of the local union. We discuss that exempt list in the meetings of the Six Counties Conference Committee. They could be officials or they could be regular members.

I know of the 1938 contract. There were some changes made with the exempt provision. I thought there was a slight change. The exempt list appears on here with a modification. It excepts the sash, 2-light windows, are left off the 1938. Sash and the 2-light windows were no longer exempted.

When the contract was signed in July, 1938, it

(Testimony of Walter C. O'Leary.)

was after the arbitration and the award was subsequently modified. The modification became effective about October, 1938. Exhibit 175 is the modification of the arbitration award. The exempt list has been changed in that agreement. 2-light windows are not here. It is the same as in July. The discussion on any exempt list [775] would be the exempt list as existing in the contract in effect at the time of the discussion. Exempt lists in the 1936 contract and the July, 1938 contract, and the modification of October 18, 1938, are the only ones that ever existed, and they were the ones discussed in the meetings of the Six Counties Conference Committee.

Millwork and patterned lumber which was caused to be marked "Hot Cargo," was not necessarily from out of the State. It had no label on and that is "Hot." The lumber that came to Kleier Bros. was marked, "Hot." I couldn't tell you if it was out of State lumber. It might have been from the white pine belt in California—I couldn't tell you definitely. Lumber that came to Blackman & Anderson was from some belt there—from a white pine belt that may not be out-of-state. I didn't know on either of those occasions whether it was out of State lumber. I might have asked where Ewauna Box Company was, but that would have been of no moment to me. I didn't know where Ewauna Box Company was. I don't remember Mr. Carrick's lumber being marked

(Testimony of Walter C. O'Leary.)

"hot," or a car of "hot cargo," on his lumber. I went there with a picket and placed the picket, and spoke to Mr. Carrick afterward. Mr. Carrick said that came from Oregon, it was either Weyerhaeuser or Long Bell, I wouldn't say definitely, but it was Douglas fir or Oregon pine. I didn't ever tell anyone they would have to buy millwork and patterned lumber from local mills. We had no agreement to keep out any material. I didn't ever tell anyone about such agreement. The union objected to material made under a wage scale less than ours, whether it was union or non-union, it broke down that wage scale—that is what I told Mr. Wine. I objected to that, if made under a wage scale less than ours, whether it was union or non-union.

I believe I signed all the agreements. I participated in negotiations with relation to the 1936 agreement. The question of the wage scale and discussion of the objection of the union as [776] it pertained to materials made at less than the wage scale we had, would come under the general head of competition. They couldn't raise our pay. They had bad competition, from Los Angeles or Chico. We have some—quite a bit from outside of California. There was discussion, any point where it would come from, if it was made at a less scale than ours. That was discussed at the negotiation meeting with relation to the 1936 contract. I told Mr. Wine the Aladdin houses would be put up by

(Testimony of Walter C. O'Leary.)

the carpenters, not "have to," they would. They would be put up by the carpenters. Millwork comes into the construction of houses. The amount depends on the drawings. Doors, trimming, windows, is all millwork. Millwork done on pre-fabricated houses is usually at the point of manufacture. Wherever it is done it has millwork.

I know Mr. Roe. He is business agent for the carpenters' union, in Hayward, and also for Alameda County Building & Construction Trades Council. I don't believe he is related to the millmen other than he is a brother member of the Brotherhood of Carpenters and Joiners. He is not a member of the Millmen's Union. I couldn't say whether I was present or not at the meeting of business agents of the Alameda Building & Construction Trades Council, at which time the matter of Aladdin houses was discussed.

I told Mr. Wine that my union would object to any lumber coming into the San Francisco Bay Area, particularly in the jurisdiction of the Oakland Brotherhood, if it was made at less than our wage scale. If it was made less than ours, I did say we objected to it coming in—it would break down our scale. In using persuasive eloquence, if I am talking to you or anyone with whom I was having a controversy in the interest of getting union-made material, I try to make him see where it would be better for all of us, if he got it made locally. I was discussing union-made material, noth-

(Testimony of Walter C. O'Leary.)

ing else but. I had already told Mr. Wine President Hutcheson gave his orders as to what we were to do. I told him [777] how we felt and we would object to it under a lower wage scale than ours, whether union or non-union, and General President Hutcheson took the stand and issued the order where it was a labeled product it was as good as a dollar bill. I was referring to that made at less than our wage scale. There is only one scale, that is the one in the contract. We had an agreement with the union, between the millowners and the union, that called for a union condition. In making that agreement we insisted on that union condition and not only with the millowners but with any millwork that came in here—we wanted it union. That was my statement to Mr. Wine. That would apply to everything at large.

I spoke to Mr. Stewart and visited him at Symon Bros. I didn't go to see Mr. Symon about having him sign an agreement. I went there in relation to looking over his stock, to see what it consisted of, and the offering of the agreement to him to sign, resulted from our conversation. I left two agreements with him at that time, asked him to look it over and sign it. I always hand them two agreements. I say, "Here's a couple of agreements, look them over, I'll be back later." I usually returned later—not within two or three days—it takes them longer than that. I returned within a week or so. He had one man employed

(Testimony of Walter C. O'Leary.)

there so far as the Millmen were concerned, and that agreement would cover that man. I think I returned. The contract was signed before. They had discussed it with Mr. Symon and decided to sign it. I would not have a discussion with him with relation to the contents of the contract, after it was signed. He might have brought up some paragraph in the contract and asked for the application, and how his firm would conduct themselves in order to comply with the contract they had signed. That might have been the reason he asked me where he would get a particular material. He might have just asked me, "What is this line, here?" He might have discussed the exempt list—I couldn't tell you offhand. I discussed the [778] doors he had without a label.

"Q. I asked Mr. O'Leary a few questions on the contents of the agreement; there were a few things I did not understand and I wanted them cleared up.

"Q. What did you ask him about it?

"A. Well, one was in regard to bringing doors, and windows, and sash from the Northwest, where we had been accustomed to buy it.

"Q. Was there anything in the contract relating to that?

"A. There was.

"Q. Do you recall what it was? What did you say to him relative to that, Mr. Stewart?

"A. I asked him if it meant that we could not

★(Testimony of Walter C. O'Leary.)

bring any more stuff from the Northwest, and he said, 'Yes, it means just what it says there, you cannot buy from the Northwest any more, you have to buy locally.'

"A. I did not say that."

I might qualify my answer. I don't want to make a fabricator out of Mr. Stewart, but there are thousands of doors in warehouses in Oakland from the North and Northwest, where those factories are, that have the labels on them, and that would be proof I wouldn't make a statement of that kind, —in fact, I am glad to see the label on the doors, especially.

"Q. Now, Mr. Stewart also said. 'I asked Mr. O'Leary if I brought merchandise in that bore a union label other than made in here what would happen.

"Q. What did Mr. O'Leary say?

★ "A. He told me they would picket the place, that we could not bring anything in that was not made in the five counties.'

"Did you make such a statement as that, Mr. O'Leary?

"A. I did not."

I don't know where Mr. Stewart purchased his doors. The only thing I knew he purchased doors from Mr. Peel, I think, was when Mr. Peel came to see me. I might have discussed it with [779] Mr. Stewart, Manager of Symon, but I don't think so. I did discuss that situation with the man who was

(Testimony of Walter C. O'Leary.)

selling doors to Symon. I didn't discuss doors with him that bore the union label. This man Peel didn't handle a union door, so I could not ask it. I didn't tell him he could or couldn't bring in doors from Central Door and Plywood Company, and if he continued to purchase them we would picket the place and close them up on a picket line, and the doors had to be brought from the five counties mills. I don't know where Symon bought the doors. I did when Peel came to see me. I knew Peel was trying to sell him doors. Whether he got doors from Peel or not, I couldn't say. Mr. Peel was selling doors for Central Door Company, I learned that afterward from Mr. Peel. That is a Portland firm. They do not have the union label. They didn't have it in 1936, 1937, 1938, or 1939. I don't think they had it in 1940. I have never seen one of their doors with a label on it. They didn't have the label on the doors they had down here, anyway. If they are in fact entitled to the label but didn't use it, that is their hard luck.

I don't bother a great deal to look at the booklets. I look at the products in the warehouses and see if they have the label. The inquiry I made elicited the information they were not entitled to use the union label, and the proof of that was it didn't bear it on their goods.

I said I had met Mr. Peel twice. I think the date was made by telephone, where he was, I don't recall. The only recollection of any discussion with

(Testimony of Walter C. O'Leary.)

Mr. Peel about doors he was shipping in, was when he came to see me and we sat down on the steps of the Labor Temple by ourselves. He might have talked to me about doors on the telephone from Symon Bros., but I don't recall it.

"Q. Would this statement refresh your memory, this is Mr. Peel speaking: [780]

"I took the telephone and told Mr. O'Leary who I was, that I wanted to ship some goods in here, doors, and I said we were an A.F.L. mill and carried the union label, and I was astounded to think we would be restricted in not being able to sell our merchandise in any part of the United States.

"Q. What did Mr. O'Leary say?

"A. Well, he just told me that was the—Mr. Stewart—what Mr. Stewart was true."

"Do you recall that conversation?

"A. I do not.

"Q. And then a short time thereafter Mr. Peel says he went over and he saw you and had a conversation, asking you to explain the reasons why he couldn't ship merchandise in here, and did you have a conversation with Mr. Peel about shipping merchandise in here?

"A. Not about what he could or could not ship in, no.

"Q. What did you have a conversation with him about?

"A. He came about Symons refusing to buy his doors, because they didn't bear the label.

(Testimony of Walter C. O'Leary.)

"Q. Was that the statement, the only thing?

"A. Yes.

"Q. The only thing that was discussed?

"A. Well, of a business nature. We might have talked about the weather and one thing another. He was selling sash as well.

"Q. Did you discuss the necessity they have a stamp of a mill in this territory?

"A. That we would prefer to see the stamp on them. That is the only thing I discussed with him.

"Q. Well, this question was asked of Mr. Peel:

"'Did he say'—meaning yourself—'the material had to bear the stamp of a mill in this territory?'

"'A. That was his answer.'

"A. I say no to that, and I make the same qualification I made before, that there are thousands of sashes and thousands of doors in the warehouses in Alameda County with a label from outside this metropolitan area.

"Q. Do you say you made this statement to Mr. Peel: [781]

"'I asked Mr. O'Leary to explain the reason I couldn't ship in here and he just told me it was forbidden by the Union to bring certain classes of goods in and since there were manufacturers who had the union stamp in this territory here—so I asked him what our workmen up there were going to do to be able to buy merchandise and eat, and he said, 'Well, they would have to get along the best they could.'

(Testimony of Walter C. O'Leary.)

"Would you say you made that statement?"

"A. No.

I gave Mr. Peel one of the copies of the exempt list. It follows that he could bring his stuff here with and without the label, without, under the exempt list. We prefer to see it with the label than without. That is what they can bring in without. We prefer it with.

Mr. Peel made a second visit. I think he rang ~~me~~ at my home. I never told him what he could or could not do at any time.

I didn't bring the picket along, in the incident with John Carrick. I discovered the material in the car and due to the fact he didn't keep his word at other times I took immediate action. I put the picket on the car and went to see him afterward. I had had a conversation with him prior to that, many times, further back than six months—the N.R.A. days. I told him we required a label on the patterned lumber and millwork. We wanted to see the label on the goods. It was not our policy to tell all lumber dealers they could not bring merchandise in from the outside if it didn't have a label. They could bring in anything they wanted but we preferred the label.

The lumber that came in Mr. Carrick's car was stored down in the middle of the car. He had it hidden, but I was able to find it. That came from firms in the Oregon pine belt. I think I inquired where it came in from—I don't know. There was

(Testimony of Walter C. O'Leary.)

no indication on the car as to the shipper. I did not know the car was coming before it arrived. The siding is on my route to Richmond. It is part of my employment to go around and look [782] at sidings and shed, if I want to get paid. It was in accordance with a practice that I went to this siding. I looked at that lumber and ascertained it had no label on it. I went to see Mr. Carriek and he told me where it came from and I think he probably showed me the bill of lading. After you talk to them they are open and frank, they think they will be out of it. I told him [783] he better get that lumber out of his premises or we would make it known to the general public, he had it there. I didn't say, "better get it out." I told him if he put it on his premises we would make it known to the general public. I told him it would be better if he took it out of the County. This base was not on the exempt list. I wouldn't say "Yes" or "No" whether I telephoned Mr. Carriek about a carload of jams. I either telephoned about them or spoke to him about them. I couldn't tell you just how many cars of jams I discussed with him. He had a copy of the agreement, but I might have given him one of those copies of the exempt list to put in his pocket so he would be a good boy. I carried a number of them with me.

Mr. Chris Wininger telephoned and came to see me at Carpenters' Hall. I couldn't tell you the exact date. I would say that I gave Mr. Wininger

(Testimony of Walter C. O'Leary.)

Exhibit 146. The reason for giving this was that we had discussed the exempt list in committee to make it more specific. For instance, it mentions T. & G. but has no particular dimensions, and in making it that way gives the sizes, and the material he was bringing in was not on the list as modified. He came to see me about T. & G. and I gave him that paper not so he could understand what he could bring and what he could not bring in, it was what required the label. I did not know before the merchandise came in that he came to talk about that. That was a car on the Sheehan & Ballard track. I didn't know anything about its source. I probably read the grade mark on the end, but what was bothering me was, there was no label on it. It didn't make any difference to me where it came from if it didn't have the union label.

Mr. Winger appeared before the Executive Committee of Alameda County Building and Construction Trades Council. He never appeared before the Council. I was a member of that Committee as a business agent. The union requested, I believe, he be cited. I didn't have a discussion with him as to what is [784] permissible for him to bring in and what he could not bring in at any time. I wrote the word, "Out" on the piece of wood, Exhibit 149. I wrote the word, "O.K." on Exhibit 148. By "Out" I meant if he brought it in it would have to have a label; that this material in this district should bear the label, and this mark

(Testimony of Walter C. O'Leary.)

"O.K." under our exemption list could come in. I didn't know where that lumber came from. I believe I heard it mentioned where it came from, but I didn't know at the time.

I told Mr. Wininger Exhibit 149 was not on the exempt list. If he bought it here, I would consider it required the label and refuse to handle it, and he said that he wanted to go along that way, so he said "Will you mark these things so I know what needs the label." I said, "It is out." I didn't tell him they would have to be rerun to get the label. I didn't tell him whether he had to do anything. I didn't make the statement, it would have to be run and bear the stamp of the union. The label of the local union.

I remember going into Blackman & Anderson. I had discussions with Mr. Blackman about material not on the exempt list he had that didn't bear the label, getting it out of the car there. I do not know where that lumber came from. I told him it was "Hot." We might have had some words about it. I never told him he could not bring in that type of lumber or material. I didn't tell Mr. Blackman he would have to stop bringing in that type of material; that he would not be permitted to bring it in. I saw him again when he went into partnership with Mr. Anderson. I objected to material not having the label. There was a discussion and he said, "What am I going to do with it to get the label on it?" and the answer to them was,

(Testimony of Walter C. O'Leary.)

that to get it originally it had to be run by union sticker hand, and by having it run with a union sticker hand, he could get the label on there. I cannot recall what happened with that lumber. [785]

I know John Kleier very well. I went through his stock several times in 1939, before and after that we had lots to say at different times—John and I. I didn't tell him he would have to get rid of some of the stock he had there. I just talked to him about getting stuff with the label on, and when it came around, that there was not a label, then we went to it. John as a rule went along during the years you mentioned here, just a little prior to that he was still in the depression. I had quite a talk with him in 1939. I presume I did, about the stock he had. I did with reference to windows and doors. It might have been in a complimentary manner—he was going along pretty good. I never told him he would have to get rid of some of that stock and burn it up. I never talked that at any time. I do not recall while I was there with the others and going through the stock in 1939, that the statement was made by me or one of those with me that he would have to either get rid of it or burn it up. I know I would never make such a statement, myself. I never had a conversation with Mr. Kleier in which I told him I would not recognize material brought in from the Northwest, whether it had the union label or not. I would like to qualify that—when we

(Testimony of Walter C. O'Leary.)

found anything with a label in his stock, I could embrace him I was so well pleased, not a word said.

"Q. This question was asked of Mr. Kleier:

"Mr. Kleier, in your conversation with Mr. O'Leary did you discuss with him whether or not you could bring in material from the Northwest that had the stamp of the United Brotherhood of Joiners of America on it?

"A. This label was the United Brotherhood of Carpenters and Joiners. We did not discuss it, but he told me right out he would not recognize it.

"Q. He would not recognize it if it came from the Northwest regardless of whether or not it had the stamp? A. Yes."

"Would you say that you made those statements to Mr. [786] Kleier? A. No."

#### Cross-Examination

By Mr. Tobriner:

In my reference to Building Trades Council in my testimony in the minutes shown me, I didn't mean San Francisco Building Trades Council—my organization is not a member of San Francisco Building Trades Council, and I had no dealing at all with the San Francisco Building Trades Council.

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#### MICHAEL D. CICINATO

called as a witness in behalf of defendants, was duly sworn and testified as follows:

(Testimony of Michael D. Cicinato.)

Direct Examination

By Mr. McKevitt:

I am affiliated with Union No. 550. I have been a member of it since 1914. I have been working as a millhand since 1905, continuously, to the present time. I was President of 550 in 1917 and 1918, and also in 1937 and 1938, from the month of July to July the following year. I was at no time a signatory to any of the agreements in evidence. I at no time acted on a negotiating committee. Between July of 1937 and July of 1938, when I was President, I worked with my tools and never participated in any meeting or negotiations concerning the 1936 or 1938 agreements.

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CLARENCE HERBERT IRISH

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Carson, II:

I am a member of the United Brotherhood of Carpenters, and belong to Millmen's Local No. 550. I joined that local in 1935 and have been continuously a member since. I am employed in Oakland at present, at the Alameda Air Base. Before that, I worked for E. K. Wood Lumber Company about five years. [787] I have held office in the Local

(Testimony of Clarence Herbert Irish.)

Union during the period from 1936 to 1940. I was President starting in July, of 1938, to the first of July, 1939, following Mr. Cieinato. I was on quite a number of committees. In the early part of 1938 I served on the negotiating committee of Local 550. I was a member of the conference committee. The negotiating committee is chosen from the conference committee. The conference committee is set up to meet with various representatives from the different locals in various counties.

We have six counties involved. There are four counties coming under the jurisdiction of the Bay Counties District Council of Carpenters. There is one Local in the Santa Clara Valley District Council of Carpenters, and there is another local in Pittsburg. I don't know just what district council that is. However, these two locals in the other two counties have formed a six-county setup and the members are chosen from those locals to meet and promote an agreement, and from that conference committee are chosen the members of the negotiating committee to meet with the employers to form an agreement. At the start, in 1938, the conference committee was made up exclusively of members from Locals 550 and 42. It was not until later in 1938 that it became a six-county committee. The negotiating committee is picked from the conference committee by the group as a whole suggesting names, and those names are voted on. They are approved by the local union, but members of the con-

(Testimony of Clarence Herbert Irish.)

ference committee are given latitude and quite a bit of power, and they have the power usually, at least in 550, and I assume in the other locals, to appoint members of the negotiating committee from within that committee.

The negotiating committee usually reports back to the conference committee, sometimes it doesn't, but in no case has it power to make any definite move without first reporting back to the members. In connection with my membership on the [788] negotiating committee in 1938, I met with employers in the spring of that year to discuss negotiating a new contract. I attended substantially all of those meetings.

Brothers Ovenberg and O'Leary were on that committee with me, from Local 550. Members from 42 were Brother Kelley and I don't recall whether it was Wilcox or Edwards. The agreement that was signed will show who it was. That is Al Edwards, he is not a defendant here. Ryan was in the District Council. Mr. Ennes represented the cabinet manufacturers, Mr. Gaetjen represented the planing mill owners, Mr. D. N. Edwards represented the mill owners and cabinet manufacturers, from Alameda County.

The entire contract came up for discussion, each paragraph was taken paragraph by paragraph, and the violent discussion arose over wages and hours, particularly wages. The negotiations lasted three months or over. Eventually, it was submitted to

(Testimony of Clarence Herbert Irish.)  
arbitration. I was not a member of the arbitration board. My activities ceased temporarily, when the matters were submitted to the arbitration board.

With reference to the general discussions which led up to the final language of paragraph 17 of the 1938 contract, Exhibit 132, we union men were not at all agreeable to an exempt list, and of course, naturally the employers wanted to exempt everything possible, and we fought the thing back and forth for quite some time. Eventually the list that was included there was decided on and made a part of it. I would say more or less mutually agreeable to all parties concerned, although, of course, we objected to it, but finally agreed. There was an award handed down by the arbitration board. The principal feature was that \$9 wage, or \$1.12½ an hour.

Government's Exhibit 132 is the contract drafted to contain the provisions of the award, in addition to those negotiated before the award was handed down. [789]

We had previously agreed that any point that we could not reach an agreement on would be submitted to an arbitrator. However, we had one man sitting on that negotiating committee, one D. N. Edwards—who is known here as Nat Edwards—he represented both the mill owners and cabinet manufacturers group on the Alameda County side. He sat in on practically all of the negotiations and just about the time we were getting things to a point where we thought we were ready to sign, he would

(Testimony of Clarence Herbert Irish.)

kick the whole thing into the creek, and as a result when we came to sign the memorandum to submit our unsettled questions to the arbitrator, he would not and did not sign, so when the award was handed down, Mr. Edwards stepped forth with the declaration he had not been a party to the arbitration. He had not signed anything and therefore he was not going to be bound by it, and none of his group was going to be bound by it.

The signatories to that were D. H. Ryan, representing the Bay Counties District Council of Carpenters; members on the negotiating committee, representing Locals 42 and 550; Mr. Ennes, and, I believe, Mr. Gaetjen, for the employers on this side of the Bay. Mr. Edwards represented both the planing mills and cabinet manufacturers on the East Side of the Bay. After the arbitration and Mr. Edwards' declaration with respect to not being bound by it, our negotiating committee might have had one or two meetings with Mr. Edwards to arrive at some sort of adjustment, but by that time matters had reached that stage, it was over the head of any individual local. It had become a district matter and our international officers were called in, I believe Brother Abe Muir, Brother Cambino, and I don't know whether Don Cameron was in or not, and Brother Ryan was in on it, and those men sort of assumed control. It was a matter not of an individual local, but it stepped up to the District Council and general officers. [790]

(Testimony of Clarence Herbert Irish.)

Local 550 voted, if Mr. Edwards did not recognize the \$9 scale, we would strike to enforce it—we did strike. We were out either 12 or 14 days. The international officers were working to adjust the matter long before the strike was called. The award was handed down in August, or somewhere there, we didn't call a strike until considerably later, and during that period there was frantic effort on the part of everybody to get the thing adjusted. There was even a circular letter sent to engineers, architects, contractors, builders, home builders, and everybody else. Several hundred letters circulated throughout the Bay Area, followed up by field men on both sides of the Bay. I was one of the field men on the other side, and we contacted these people and tried to explain the situation to them. It was all explained in the letter, but we thought it might be wise to follow it up.

Before my local union actually went on strike we contacted Mr. Edwards to start with, and he stood pat on it, declaring he was not a party to the arbitration and therefore he was not bound by it, and that none of the group that he represented were bound by it. And, as I say, the District Council had circulated circular letters, stating the facts of the case, to all employer groups, and then it was followed by field men, two on the other side and, I think, two on this side, and the story was told and elaborated on as I described.

As a result of the efforts of Locals 550, 42, mem-

(Testimony of Clarence Herbert Irish.)

bers of Bay Counties District Council and national representatives referred to, an adjustment was arrived at with respect to the wage scale in dispute. The new wage scale eventually arrived at was \$8.50, that is, \$1.06½ an hour. Following the arrival of the new scale, eventually the six counties agreement was entered into.

I did not have anything to do with the negotiating of the 1936 contract. I didn't hold any office with the local union during the time that contract was negotiated or signed. I never [791] was a business agent of my local union.

I do not know of any secret agreement or understanding between any of the local unions or district council or any of the labor defendants in this case and the employer defendants, with respect to Northern millwork or millwork coming from outside the State of California. I know of no instance where any union-labeled Northern millwork was stopped.

Cross-Examination

By Mr. Burdell:

I was a negotiator in 1938 and signed the 1938 contract. I think I was a member of the conference committee in the early part of 1938—the first of the year. I don't know whether my name has ever officially been removed from that committee or not, although I haven't been actively on it for the last year, or year and a half. The conference committee did not meet with the mill owners, it was a nego-

(Testimony of Clarence Herbert Irish.)

tiating committee. The conference committee only met among themselves.

During the period January, 1938, until the middle of 1940, I imagine the representatives of Local 550 met with D. N. Edwards at various times. That is not as an official body, he was one of these kind that would call us up at any time, if he happened to think he could have a new contract that we might submit one to him, but as an official body we didn't meet. I sat in on some of those meetings. I don't recall there were many meetings. They had no bearing on the negotiating committee, because not all of the negotiating committee of either employers or employees were present. Mr. Edwards would cook up some sort of an agreement and would call us up and submit it in the hope we might bring pressure to bear or would influence any of our members to put his proposition over. I suppose he cooked up a dozen or so suggestions. Possibly we had a dozen meetings, but none of the entire committee was present—they were unofficial. It [792] got to the point we discussed everything from soup to nuts—anything that came along, and finally I got tired and didn't go any more, because we couldn't get anywhere.

The conference committee never met with the mill owners. I attended lots of meetings with employers when I was on the negotiating committee. We met every day, sometimes, for two or three weeks. I would say that the man who wrote the

(Testimony of Clarence Herbert Irish.)

minutes of Local 550 for February 17, 1938, made a mistake. It should have been "negotiate" rather than "conference." At that particular, very likely, there was a meeting between the negotiating committee and the mill owners. Our agreement called for opening the agreement on the first of February. We probably had several meetings up to that time. The minutes are correct, except for the fact that they referred to the conference committee instead of the negotiating committee.

I was on the conference committee in October of 1938. I don't recall specifically whether I attended the meeting on October 8, 1938. Exhibit 124-6, the minutes of October 8, 1938, indicate I was present at the meeting.

If the contract with Pacific Manufacturing Company hadn't been made, negotiated, it was just about to be introduced, because I think it was along about that time that we did line up the P. M. with the six counties set-up. Whether or not it had been negotiated, there was definitely discussion about the Pacific Manufacturing Company contract. Pacific Manufacturing Company is in Santa Clara County. It originally consisted of four counties. Four counties came under the jurisdiction of the Bay Counties District Council of Carpenters. After the arbitration and agreement that followed, two more counties were added. [793]

KENNETH DAVIS,

called as a witness on behalf of Defendant, being first sworn, testified as follows:

Direct Examination

By Mr. Carson, II:

I have lived in Portland, Oregon since 1938; before that Tacoma, Washington. My occupation is Executive Secretary of the Northwestern Council, Lumber and Sawmill Workers affiliated with the United Brotherhood of Carpenters. They have been affiliated since 1935. I belong to Local Union 2633, Tacoma; before that Federal Charter 18285, American Federation of Labor. In connection with my position and union affiliation I am acquainted with the operation and organization of the lumber and sawmills in the States of Oregon and Washington.

"Q. I call your attention, Mr. Davis, to the McCleary Timber Company which has been previously testified about in this case, the testimony appears in transcript No. 4 at page 320, and ask you if you know whether or not during the period from 1936 to 1940 that company was organized by the United Brotherhood of Carpenters and had the right to use the label of the United Brotherhood of Carpenters on its woodwork and material.

"Mr. Zirpoli: I object. This is immaterial and irrelevant and not within the issues of the case.

"The Court: Sustained.

"Mr. Carson, II: I would like to make an offer of proof in this connection.

(Testimony of Kenneth Davis.)

"The Court: Yes.

"Mr. Carson, II: The testimony of this witness will show that the McCleary Timber Company, the Weyerhaeuser Lumber Company, the Long-Bell Lumber Company, the Central Door and Lumber Company of Portland, Oregon, the Central Door and Plywood Com- [794] pany of Albany, the C. D. Johnson Company, the Robinson Manufacturing Company at Everett, Washington, the Ewauna Box Company at Klamath Falls and the Algoma Lumber Company at Algoma, Oregon, from the period 1936 to the period of 1940 were not organized by the United Brotherhood of Carpenters, were not working under a contract with any local union or affiliated organization of the United Brotherhood of Carpenters, did not possess the right to use the union label, and none of their products with the exception of the doors of the Central Door and Lumber Company possessed the union label.

"Mr. Zirpoli: I make the same objection, your Honor; it is immaterial and irrelevant and not within the issues of this case.

"Mr. Routzohn: Your Honor please, I am not certain that the full import of this testimony is being considered at this time.

"The Court: I understand it fully. If you wish to add anything to the offer that has been made by Mr. Carson, you may.

"Mr. Routzohn: Merely a statement as to the purpose, your Honor.

(Testimony of Kenneth Davis.)

"The Court: I don't care to hear anything further. I think Mr. Carson has made it quite clear. The objection will be sustained.

"Mr. Carson, II: Q. Mr. Davis, are you acquainted with the facts concerning the organization of the lumber and saw mills located in Oregon and Washington during the year of 1933?

"A. I am.

"Mr. Zirpoli: I make the same objection, your Honor; immaterial and irrelevant.

"The Court: Yes. The answer may go out. The objection is sustained.

"Mr. Carson, II: Q. Are you acquainted with the facts surrounding the organization of the lumber and saw mills in Washington and Oregon in the year 1934? A. I am.

"Mr. Zirpoli: Same objection.

"The Court: The answer will go out.

"Mr. Zirpoli: Immaterial and irrelevant.

"The Court: The objection is sustained.

"Please don't answer until I have an opportunity, witness, to hear the objection, and an opportunity to rule.

"Mr. Carson, II: Without repeating the question, but the same facts as to 1935, 1936, 1937, 1938, 1939 and 1940.

"Mr. Zirpoli: I interpose the same objection, your Honor.

"The Court: Sustained.

"Mr. Carson, II: May it please the Court, we

(Testimony of Kenneth Davis.)

offer this testimony and this witness' testimony will show, in the year 1933 the mills in the Northwest, the lumber and saw mills in the States of Washington and Oregon were independent organizations and not affiliated with either the AF of L or the CIO; that their wages at that time were from 19 to 28 cents per hour; that in the year 1934 these organizations under the NRA affiliated with the AF of L and received Federal charters, at which time their wages were advanced to the minimum wage of 40 cents per hour; that in the year 1935 they became affiliated with the United Brotherhood of Carpenters and received nonbeneficial charters, at which time their minimum wages were increased to 50 cents per hour; that during the year 1940 they asked for recognition in the United Brotherhood of Carpenters under the classification of semi-beneficial locals; upon the recommendation of the president, general president Hutcheson, they were accepted into the organization and their charters were issued on a semi-beneficial class with the semi-beneficial benefits as set out in the constitution of the United Brotherhood of Carpenters and Joiners which is in evidence in this [796] case; that in the year 1935 when they first affiliated with the United Brotherhood of Carpenters, they had approximately 1,900 members, and by 1937 their membership had increased to 35,000 members; that in the year 1937 certain industrial warfare occurred in the States of Washington and Oregon, resulting in splitting

(Testimony of Kenneth Davis.)

up that union by the CIO in that territory, which left approximately 20,000 members in the United Brotherhood of Carpenters and approximately 15,000 went over to the CIO: that in the year 1940 these organizations were all back into the United Brotherhood of Carpenters and had increased their membership to 50,000; that the testimony of this witness will establish that the organization's efforts; that the contracts and efforts on the part of the locals and the District Council in the Bay Counties area was directly allied and a part of the organization's efforts of the United Brotherhood of Carpenters in the Northwest and is interallied with that organization and with the efforts to stop the inroads of the CIO.

"Mr. Zirpoli: All of which testimony, I submit, is immaterial and irrelevant.

"The Court: Do you wish to add anything?

"Mr. Routzohn: I think it is quite material, your Honor, for us to show—

"The Court: Please, Judge; I don't wish to hear any argument. The objection is sustained.

"Mr. Routzohn: All right, sir.

"The Court: I am sorry, but I don't wish to hear any argument."

Thereupon the following minutes of Local Union 42, Exhibit No. 5, were read: [797]

"Under date of February 18, 1936, 'Under New Business. A motion was made to appoint a committee of seven to work in conjunction with the

officers, to draw up plans for a new agreement to be presented to the Mill Owners within the sixty-day period as specified in the present agreement. Motion carried.

"The next one is/under date of February 25, 1936.

"The Court: Mr. Carson, are the minutes paged?

"Mr. Carson, II: No, they are not, they are dated but not pages. Under New Business:

"The Chair appointed a committee to draw plans for a new agreement to be presented to the Mill and Cabinet Association in the near future. The Committee appointed by the Chair being as follows, President Kelly, Vice-President Nelson, Financial Secretary Fallon, Recording Secretary Plato, Treasurer Edwards, Conductor Dave Edwards, Warden Geleich, Trustees Burns and Knowles, B. A. Helbing, Brothers Sammet, Solholt, Reinhardt, Weiss, Fromm, Vetrano and one other member yet to be selected. It was agreed to meet in committee Saturday, February 29, at 2:00 p. m. The Secretary was instructed to inform Local No. 550 to this effect asking them to have their committee meet with this Local on the date mentioned. Instructions complied with.

"Under date of April 14, 1936—

"Mr. Burdell: I am going to object to the further reading of the minutes as immaterial, irrelevant, and incompetent, and self-serving, and hearsay.

"The Court: Overruled.

"Mr. Carson, II: Under Special Order of Business.

"The Chair presented to the membership under Special Business the matter of a new working agreement with the Mills and Cabinet Shop Owners of this District, at the expiration of the present agreement, which terminates June 27, 1936. The Chair, speaking for the Committee which had been meeting in joint session with Local 550 for the past eight Saturdays, presented [798] the recommendations of the Committee of Local 42 as follows: The Committee of Seventeen, representing Millmen's Union No. 42 recommends that a trade agreement be inaugurated in this District to demand the following: No. 1, closed shop in Alameda County. No. 2, A 40-hour week Monday to Friday, inclusive, between the hours of 8 a. m. and 5 p. m. No. 3, Minimum wage scale to be \$1.12½ cents an hour."

"Mr. Burdell: May I make the objection to the reading of the next minutes on the ground that they are immaterial and irrelevant.

"The Court: Overruled.

"Mr. Carson, II: Under date of June 9, 1936, under "Communications." "From Lumber and Sawmill Workers' Union, Local 2616, Oakridge, Oregon: Information on Westfir Lumber Company's method of unfair competition, stating Westfir Lumber Company is operating a 100 per cent. scab

crew. Millmen are cautioned to watch for any Westfir Lumber. Read and filed.

“Under date of June 27, 1936:

“The Joint Committee of Locals 550 and 42 Millmen's Union submitted to their respective locals the recommendations of their deliberations after having met with the Mill and Cabinet Manufacturers of San Francisco and Oakland. The Committee set forth that the Union Shop in Alameda County had been agreed upon and also the matter of hours. The only remaining obstacle being the wage question of \$1.12½ cents per hour. The owners stressing upon the fact they could not pay above the Pacific Manufacturing Company scale in this district.’

“Under date of July 21, 1936, under “Special Business”:

“The proposition of 80 cents and 90 cents for millmen in the counties of San Francisco and Alameda was put before the meeting and declared open for discussion. After being discussed at some length a secret ballot was taken for the purpose of [799] accepting or rejecting the offer of the Mill and Cabinet Owners. The result of the ballots cast being Yes or accepting the offer None; No, or declining the offer, 229.’

“Under date of August 4, 1936, under “Reports and Committees”:

“B. A. Helbing rendered his regular weekly report stating conditions were good and many men

are being paid over the recognized scale of 80 cents. Men were needed in all branches of our crafts, with but few, if any, available. He also reported on the selection of an arbitration board, as yet not established, but has made an effort to contact several prominent men whose names had been submitted and considered. The selection of two men had been agreed upon by both the Mill Owners and by this Union. Those already selected and agreed upon being Judge Walter P. Johnson and Mr. Ledwidge, an attorney, of Berkeley, California. Both of these men had accepted as arbiters.

“Mr. Burdell: Might I ask you again what date that was?”

“Mr. Carson, II: August 4, 1936. Under date of August 25, 1936, under “Special Business”:

“The proposal as tendered by the Mill Owners and Cabinet Manufacturers of Oakland and San Francisco to Locals 42 and 550 having to do with wages and hours was read aloud by the Secretary. But as Helbing and Sammet, comprising the Conference Committee of this Local, and Brother Kelly sitting as Secretary in the meetings, spoke on the proposal offered. Each in turn addressed the meeting, speaking on reasons why, in their opinion, the proposal should be ratified by the membership. The matter was then declared open for discussion by the membership at large. Heated arguments against the acceptance of the proposal were had from

numerous members. It was denounced as being a wage proportionate to truck drivers and not a wage suitable to skilled mechanics. After argument had been heard from many members, the question was asked for and the issue was put up for a vote by secret ballot. Voters were instructed several times in the proper [800] manner to vote for or against the issue. Ballots were distributed, and the votes were then cast, the resulting vote being: Those against accepting proposal, No., 242. Those for accepting proposal, Yes, 90.'

"Under date of September 1, 1936:

"The wage agreement as passed by a majority vote of both locals voting as a unit was hotly discussed off the floor by several members present. A motion was made to call a joint meeting of both locals for next Saturday to reballot on the proposal. The motion was not entertained by the Chair. An Appeal from the decision of the Chair was made and after both arguments were heard the Chair's decision was upheld. Brother Kelly at this point rose to state that any motion made under good of the order was out of order.'

"From the Minute Book of Local 42 for the period from December 7, 1937, to March 28, 1939, Government's Exhibit No. 8, under date of March 1, 1938:

"Brother Byrnes arose to inquire who the consignee was of the C. I. O. lumber, and was informed that some had been stopped in transit to

A. L. Stock & Lumber Co. by B. A. Edwards and the B. A. of Local 22.'

"Mr. Burdell: Will you stipulate what Local 22 is?

"Mr. Carson, II: I will have to inquire. I will stipulate Local Union 22 is a local union of carpenters situated in San Francisco. In order to clarify that situation it is not a local union of Millmen, but of Carpenters, who do construction work in outside buildings and industries.

"Under date of June 28, 1938, "Reports of Committees and Delegates and Business Agents:'

"Brother Kelly reported on the Conference Committee stated Judge Walter Perry Johnson had been accepted" — it is "Excepted" here, but it should be "accepted"—"as arbitrator [801] and that Brother Dave Ryan as our arbitrator. He said that our case would be presented in briefs and suggested Board meet Saturday and Sunday.' "

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CHARLES ROE,

called on behalf of the Defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Carson, II:

I am a member of Carpenters' Local 1622. That is a carpenters' local and not a millmen's local. I have belonged to Local 1622 four and one-half

(Testimony of Charles Roe.)

years; before that 36 in Oakland, that is also a carpenters' local. During the period of my membership with Local Union 1622 it became affiliated with Alameda County Building and Construction Trades Council. I hold the office of Assistant representative with Alameda County Building Trades Council. My duties are to aid and assist negotiating committees, cooperate with the various crafts affiliated with the Council.

In connection with my duties as Assistant business representative I was not a member of any negotiating committee or conference committee of either Local Union 42 or 550. I have been in Court since the trial started and heard the contracts testified to. I have not had anything to do with the negotiating, arbitrating or signing of any of those contracts. During the period from 1936 to 1940 I did not serve in any position on behalf of either Local Union 42 or 550.

I recall Mr. Brown who represented the Aladdin Ready-Cut Houses. I had a meeting with him in the early part of 1940. Walter O'Leary was present. I heard Mr. Brown's testimony in Court. I contacted Mr. Brown at his office. I believe his wife [802] was there; Walter O'Leary also. I asked him the methods of business or operations of Aladdin Ready-Cut House Company. He stated they were union but I never heard of them being union, so we continued the conversation and I left and sent him the citation to appear before

(Testimony of Charles Roe.)

the Board of Business Agents of the Building Trades Council. Unfortunately, I was not able to appear, I was out of town. My conversation with Mr. Brown was merely along the line of the organization, the type of work he was doing, and I asked him whether or not the products bore the label. He stated it did. I went further and asked if they carried the label with the studdings, floor joists and so on. He also stated they carried it. I congratulated him on the extent of the use of the label because the Brotherhood never put it on that type of product.

I had a discussion relative to the erection of Aladdin Ready-Cut Houses in this community. I asked him who supplied the labor, whether they subcontracted the work or whether they hired it locally themselves. He stated they subcontracted out, which made it a piecework proposition which was against the rules of the Bay District Council. I stated under that condition they could certainly bring in all they wanted, but we would not furnish them carpenters for it. I absolutely didn't state to Mr. Brown, at any time during that conversation, that his Company would not be allowed to ship their products into this area. I did not ever see Mr. Brown again after that conversation. I merely reported to the Council on having the meeting with Mr. Brown. I gave them an idea of the way he was operating. Of course, I had determined the status of the company and they were still operating one hundred percent.

(Testimony of Charles Roe.)

nonunion, and there was no action taken by the Building Trade Council, it was merely a routine report.

I never had any further conversation with Mr. [803] Brown subsequent to the report to the Board of Business Agents. He has never attempted to reach me and I never heard of him building any houses, so I never bothered to contact him.

I have not heard of, or know of, nor have I been a party to any secret agreement or understanding between any of the labor defendants in this case and the employer defendants with respect to mill-work coming into the State of California from outside the State.

Cross-Examination

By Mr. Todd:

Bay Counties District Council of Carpenters is at this time affiliated with the Alameda County Building Trades Council. I believe they became affiliated in the latter part of 1938, December. It may have been 1937. I think it was December. I was a member of the Committee chosen from the various locals to arrange to affiliate with the Building Trades. I believe it was a copy of the same type of affiliation with which the Bay Counties District Council of Carpenters affiliated with the San Francisco Building Trades Council. Paragraphs numbered 1 to 9 of Exhibit 2-C constitute the conditions under which the Bay Counties District Council

(Testimony of Charles Roe.)

cil of Carpenters affiliated with the Alameda County Building Trades Council.

Cross-Examination

By Mr. Burdell:

I have never been employed by Local 42 or 550. I gathered some information for the Negotiating Committee for a very short time, four or five weeks, for Local 550. You might call my position an investigator, I worked it in with the regular weekly work. That is the only appointment I had for 550. I may have been called a special business agent. It is up to the [804] Recording Secretary to call me special representative or investigator. It was a personal matter.

My meeting with Mr. Brown must have been the early part of March, the early part of 1940. I did not say I went there at the request of Mr. O'Leary. I asked Mr. O'Leary to go along because he had some other business in that part of town and we just made the trip at the same time. No one else went with us. Mr. Brown told us that the material of the Aladdin Company bore the label. I telephoned him and made an appointment, aside from that I haven't contacted him prior to the time I went to see him with Mr. O'Leary. I had never seen or talked with him prior to that time.

I noticed he was running an advertisement in the Sunday Tribune that he had a ready-cut house, union made, and to my knowledge there was no

(Testimony of Charles Roe.)

ready-cut house in the United States manufactured under Union conditions, so I called him up and arranged an appointment with him to find out if such was the case or not. When I called up I merely asked for an appointment to discuss the labor problem. I don't think I called or contacted him and told him I wanted to talk to him about buying a house. I discussed prices with him. He had a series of pamphlets on his desk for various types of houses with prices on them, and I took some with me. In fact, I even put two of them out for bids to compare the cost. That was at my meeting with Mr. O'Leary in March, 1940.

In addition to that I didn't ever personally call him up and tell him I wanted to talk about prices or the purchase of an Aladdin Ready-Cut House. I did get as much information as I could. I used several methods to get it. I got someone else to telephone. I had—it was a sister who was the prospective purchaser. [805]

Thereupon the following minutes were read from the minutes of Local Union 550, Exhibit No. 18:

“Under date of April 24, 1935:

“Brothers Ovenberg and Sholden reported on activities of Local 42 in regards forcing an agreement with Mill Owners.

Under date of May 13, 1935—

“Mr. Burdell: If your Honor please, I am going to object to the reading of the minutes of May 13, 1935 on the ground they are immaterial and irrelevant.

"The Court: What is it about, Mr. Carson?

"Mr. Carson, II: It is in connection with the picture that Mr. Sammet and Mr. Ovenberg gave on the witness stand, showing the background which led up to the 1935 agreement, and then following the 1936 agreement.

"The Court: Overruled.

"Mr. Carson, II: Under date of May 13, 1935:

"The resolution adopted by Local Union No. 42 of San Francisco regarding demand for better conditions was read."

"Under date of May 29, 1935:

"Brother O'Leary then spoke on the response of the men in the shops and mills to our appeal for better conditions."

"Under date of June 1, 1935:

"Motion passed that a strike committee be appointed. Brothers O'Leary, Chairman, Bennett, Walsh, Torre, Corrers, Johnson, Larsen and Koerlin. Motion passed that all members of 550 not working be subject to picket duty. Brother O'Leary, Chairman of Strike Committee, then called on the members to meet Monday morning at 7 Carpenters' Hall."

"Under date of January 2, 1936:

"Motion passed that committee including executive officers be appointed to start plans for our future demands."

"Under date of March 19, 1936: [806]

"Motion passed that Local 550 notify the Mill"

Owners of Alameda County of their desire for a change in our agreement.'

'Under date of November 5, 1936:

"Motion passed that 550 request District Council to enforce the union stamp and label.'

"Under date of August 19, 1937, under the heading "New Business":

"By motion our executive officers instructed to notify the Mill Owners not to buy any C. I. O. building material lumber or millwork as the carpenters will not use it.'

"Under date of September 30, 1937:

"From the Fresno Building Trades Council notice that they will handle no more doors and millwork without the union label.'

"Mr. Burdell: If your Honor please, I move to strike the last minutes read on the ground they are immaterial and incompetent, as they relate to the Fresno Building Trades Council.

"The Court: Denied.

"Mr. Carson, II: Under date of March 31, 1938:

"Delegates Sholden, Ovenberg and O'Leary the Council is to fight the C. I. O. to a finish and are asking each local to donate \$1 per member from their treasury to finance this fight. Brother Irish reported on the Building Trades Meeting and states the Council is prepared to back the Bay Counties District Council in their fight with the C. I. O.'

"From the minutes of Local 550, Government's

Exhibit No. 21, the book starting with the minutes of June 24, 1938; reading from the minutes of January 20, 1939:

“Communications from the Lumber Products Association, Inc. notice of their desire to terminate our contract as of May 1, 1939 and to open negotiations on a new one noted and filed and left in the hands of our Conference Committee.”

“Under date of January 12, 1940: [807]

“The call for a referendum vote by the Six Counties Conference Committee on their recommendations for improved working conditions. The minutes of the Conference meeting of January 6, 1940 were read as was the letter from the Conference Committee requesting the vote. The following brothers responded for the Committee when called upon by the Chair. Brother Ovenberg, in a broad manner outlined the intent and purposes of the committee, stating the committee recommendations were not flat hit the street demands but were something to present to the Mill Owners as having the approval of the membership and it was then up to the Committee to present our case and get the most they can for the mill boys. Brother O'Leary repeated and emphasized a few of Brother Ovenberg's remarks. Brother Kelly, of Local 42, present on other matters, was called upon. Brother Kelly stressed the point that the mill boys should be on their toes at all times for improved conditions and by this continued striving develop the

machinery and perfect the mechanics for achieving our desires thus keeping abreast of the other building crafts on wages and working conditions.

“The vote in favor was called for and Brother Jack Sholden was appointed to count the left side of the house as assistant to the conductor. The count showed in favor of the Committee's recommendation 127, those against none.”

JOSEPH F. CAMBIANO,

called as a witness on behalf of defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Routzohn:

I live in San Mateo and have for about thirteen years; before that in San Francisco and San Jose. I have [808] lived in California practically all my life. I am a millman by trade. I joined Millmen's Union 262 in San Jose on June 6, 1903, and have been a member of the United Brotherhood of Carpenters and Joiners continuously since that time. I transferred into San Francisco during the earthquake and fire for a short period then back to San Jose, and then from San Jose to San Mateo. I am now a member of 262 of the Carpenters' Union.

I have held quite a number of official positions. I was President of 262 for a number of years, was the Field Representative of the Santa Clara Build-

(Testimony of Joseph F. Cambiano.)

ing Trades Council, Santa Clara County; Secretary of that Council; Building Material Manager during the American Plan fight at Santa Clara, San Mateo and San Francisco, and I returned to San Mateo as a Field Representative for Carpenters' 262 until May 3, 1937, when I was appointed an organizer for the United Brotherhood of Carpenters and Joiners of America. I have been serving as organizer since that date, about four and one-half years. I have no particular territory, I am subject to go anywhere I am sent by the General President Mr. Hutcheson, but most of my time is spent in California.

I had to do with some of the efforts that were made in securing a contract with Pacific Manufacturing Company of Santa Clara. I worked fourteen years for that company. I had something to do with the straightening out of differences with Pacific Manufacturing Company. That followed after the trouble that took place in the City of Oakland. I was called in here after an arbitration award was handed down for \$9.00 a day.

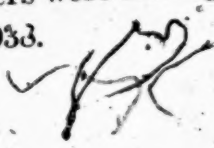
The employers on the Oakland side of the Bay had refused to become a part of it, which resulted with some three hundred members of our Local Union 550 working on that side of [809] the Bay had struck. While they were trying to enforce \$9.00 a day on this side, most of the mills were paying it. Practically all were paying it on this side, including down along the Peninsula, some trouble broke out

(Testimony of Joseph F. Cambiano.)

with Pacific Manufacturing Company, they were paying \$8.00 a day while the group here had a \$9.00 schedule, they had the advantage of \$1.00 a day and they came here and grabbed off practically all of the big work.

Pacific Manufacturing Company had the advantage with the result that the District Council of Carpenters had served notice on some of the contractors here that Pacific material coming into this district would not be permitted to be installed. That caused the Santa Clara Valley District Council of Carpenters to notify the General Office and request that I be sent into this District to settle the mill differences; the reason of my being sent here being I was a millman. I came in around the latter part of September and the result has been reported here time and again, a settlement came about on the \$8.50 per day. That brought the Mill Owners on this side of the Bay down half a dollar, but in order to bring about a settlement of dispute that was in existence for some time I brought in the six counties, which took in Santa Clara, San Mateo, San Francisco, Alameda, Marin and Contra Costa, all under one basic agreement. It was not directly uniform, the intent was it should be as near uniform as we could possibly get it.

I reported to the General Office regarding the difficulties the Pacific Manufacturing Company was having and the others were having with it in August and September, 1933.



(Testimony of Joseph F. Cambiano.)

I forwarded Exhibit No. 42-14, for identification, to the General Office over my signature, which is the letter dated September 10, 1938.

Thereupon the document was introduced in evidence [810] as Defendants' Exhibit 2-D, and the portion relating to Pacific Manufacturing Company was read as follows:

"It is addressed to Mr. William L. Hutcheson, General President, Carpenters' Building, Indianapolis, Indiana, and dated September 10, 1938.

"I also received a wire from Brother Blanchfield, Secretary of the Santa Clara Valley District Council of Carpenters, also a wire from First Vice-President, instructing me to take this matter up in regard to the Pacific Manufacturing Company. Upon my return from Sacramento, I called Brother Blanchfield and made arrangements to meet him in San Jose with the Committee of the Millmen's Union. I have been advised that Brother Ryan, Secretary of the Bay Counties District Council of Carpenters, has notified Mr. H. H. Larson, Contractor on the Redwood City Courthouse, that materials coming from the Pacific Manufacturing Co., of Santa Clara, would not be used in the Bay Counties. For your information a new wage scale of \$9 a day was agreed upon by arbitration for the Bay Counties. This does not take in Santa Clara County. Now, the San Francisco boys are endeavoring to keep out materials from the Pacific Manufacturing Company until such time as they comply with the

(Testimony of Joseph F. Cambiano.)

San Francisco scale. I warned Brother Ryan some time ago that his groups were leading us into trouble. You know Pacific Manufacturing Company have operated for fifteen years open shop. I signed them up two years ago, under a closed shop union agreement. Upon the expiration of the first year, they renewed their agreement for another year, of which I am enclosing a copy for your files. While in San Jose I called Mr. Pierce, President of the Company, over long distance, and I am enclosing a copy of the letter which I received from him. He is going to insist, and he wants an answer, as to what position the Brotherhood is going to take against his materials being shipped in other parts of this State.' " [811]

Following that I received a letter from Mr. Hutcheson assigning me to this District. Exhibit 42-15, for identification, is a copy of a letter received from General President Hutcheson.

Thereupon the document was introduced in evidence as "defendants' Exhibit 2-H", and was read as follows:

"September 20, 1938.

"Mr. J. F. Cambiano,  
Hotel Stilwell,  
838 South Grand Avenue,  
Los Angeles, Calif.

"Dear Sir and Brother:

"We have received a request from the Santa Clara Valley District Council that you be assigned

(Testimony of Joseph F. Cambiano.)

to the Santa Clara and Bay Counties District until such time as the mill situation can be straightened out, and it is my desire that you immediately arrange to proceed to this locality and give attention to the matter.

“For your information, I enclose a copy of letter today written to the Santa Clara County District Council, and by a perusal of same you will note they have been informed therein what would have to be done in the matter, and that a copy of the communication written to them was being sent to you with instructions that the same be used for your guidance in rendering what assistance you could, and as above stated it is therefore my desire that you proceed to that locality and see what can be done along the lines indicated in the enclosed letter.

“Fraternally yours,  
General President.” [812]

After receiving that communication I came to the San Francisco District. The very first thing I had to do was get our boys together here and find out the latest development, because I was out of the County. Afterward I proceeded to call on the employers, some of the mill owners on the Oakland side, Pacific Manufacturing Company and also Redwood Manufacturing Company. I did not bother on this side because they had already agreed on the \$9.00 scale. The boys were out thirteen days. As

(Testimony of Joseph F. Cambiano.)

a result of conferences and during my investigation I had discovered there was already a move on foot to compromise the scale at \$8.50. That was brought about by the efforts of Nat Edwards of Oakland. The source of all the trouble was from the Oakland side. In order to settle the argument for all times, after talking it over with the General President, Mr. Hutcheson, he came to the conclusion it was going to be necessary to get a Union agreement in the six counties. That is what I proceeded to do and what was accomplished.

I sent the letter, (Exhibit 42-16, for identification, to Mr. Hutcheson.

Thereupon the letter was introduced in evidence as "Defendants' Exhibit 2-I", and was read as follows:

"October 1st, 1938

"Mr. William L. Hutcheson,  
General President,  
Carpenters' Building,  
Indianapolis, Indiana.

"Dear Sir and Brother:

"As per your instructions, I went to San Jose, and took up the controversy with the District Council of Carpenters and Pacific Manufacturing Co. We held a meeting with Mr. Pierce, Mgr. Pacific Manufacturing Co., and he informs me that he received notice from the Bay Counties District Council, through Brother Ryan, that his materials were not to be used in the Bay Districts. This is creat-

(Testimony of Joseph F. Cambiano.)

ing considerable unrest [813] in Santa Clara County. I also received a copy of the letter and instructions that you mailed to Secretary Blanchfield of the Santa Clara Valley District Council of Carpenters. I personally conveyed these instructions and the contents of the letter to Mr. Pierce. He is of the opinion, and the only reason that he has not renewed his agreement was on our account that the Millmen's wanted to give San Francisco an opportunity to close their negotiations. Mr. Pierce wants to know definitely whether he stands with the use of our label, as it affects not only the Bay districts, but Stockton, Sacramento and Fresno. I will be very happy to go into this matter when we meet in San Francisco. I also attended the meeting of Millmen's Union No. 262, San Jose, and they are very much disturbed over this whole situation, as it involves some 400 members of our organization.

"Tuesday, I contacted Brother Ryan in San Francisco. I am informed that the Oakland side of the Bay are anticipating trouble. I have also been informed by the employers of San Mateo County that they received instructions from San Francisco that after Friday that the label and the men would be taken out of all shops that did not conform with the arbitration award of San Francisco. In this regard, I contacted the Secretary of the Lumbermen's Club of San Mateo—two meetings were held. They informed me that they had not received any information in regard to the change of conditions,

(Testimony of Joseph F. Cambiano.)

and furthermore they were not members of the Planing Mill and Cabinet Manufacturers Association. However, I arranged, in one of these meetings, where they have agreed to enter into an agreement for San Mateo County. Knowing these firms as well as I do, it has been the policy of San Mateo County ever since the big trouble, to negotiate with San Mateo County. I had Secretary Ryan at one of these meetings. I am satis- [814] fied upon my return that I will be able to close the deal.

"Upon my return to Los Angeles Wednesday evening, I received a long distance call from Mr. Pierce of the Pacific Manufacturing Co., also Sec'y Blanchfield, advising me that a number of contractors from San Francisco, customers of the Pacific Mfg. Co. had just notified them that materials coming from Santa Clara would not be installed. I immediately called up Mr. Pierce and also Sec'y Ryan, and advised them to cease notifying contractors in this respect, inasmuch as the Pacific Mfg. Co. has agreed to negotiate and we are complying with your instructions wherein you notified us to inform the Pacific Mfg. Co., as per Section 21, which has to do with giving a 60-day notice for change in their agreements. Brother Ryan has agreed, until such time as I return to San Francisco.

"Thursday a meeting was called by the Cabinet Manufacturers here in Los Angeles for the purpose of closing the agreement, but I find myself in a rather peculiar position—for all these years I have been selling the labels of our Brotherhood, but ac-

(Testimony of Joseph F. Cambiano.)

According to your ruling, dealing with the Pacific Mfg. Co., so far as the Weber Company is concerned this will let them out. However, I have not informed him of your decision until after we meet in San Francisco. In the meantime I am stalling with the closing of this Millmen's Agreement.' "

Section 21 mentioned in the letter has to do with the expiration of the contract. Sixty days' notice must be given for a change in the agreement. It applied here in the Bay District. Pacific Manufacturing Company claimed they had not received a sixty day notice for a change in their contract. The District Council, by an oversight, or some reason or other, let the time elapse. Pacific Manufacturing Company claimed they were going to continue on under the present agreement, that their contract would run along for another year because of the oversight in not giving them the sixty day notice. [815] They claimed they could run for another year at the \$8.00 rate, while the others were paying the \$9.00 scale:

There was a strike called at that time, the first part of October, 1938, in Oakland. We effected an agreement covering all of the six counties, in what we have termed the 1938 agreement. We made a six-county unit out of it instead of a four-county unit. The Redwood Manufacturing Company came in by virtue of an action by Local Union 1956 of Pittsburg.

Letter, Exhibit 42-20, for identification, is a report sent to Mr. Hutcheson, dated October 29, 1938.

(Testimony of Joseph F. Cambiano.)

Thereupon the letter was introduced in evidence as "Defendants' Exhibit 2-J", and was read as follows:

"Mr. Routzohn: "October 29, 1938.

Mr. William L. Hutcheson

General President

Carpenters' Building

Indianapolis, Indiana

"Dear Sir and Brother:

'Reporting on the Mill situation: We have arrived at an agreement with the Pacific Manufacturing Co. of Santa Clara and the District Council of Carpenters. The same has been presented to Local Union #262 last Monday evening, and by vote of 213 to 6, voted to accept the agreement. I am now checking on the uncompleted work, which will determine the date when the new wage schedule goes into effect. As near as I can figure it out at this time, with \$311,000 worth of uncompleted work it will take in the neighborhood of 40 days. The Millmen's Union of San Jose is well pleased with the settlement.

'Have also taken up with the Redwood Manufacturing Co. at Pittsburg, with the result that an agreement has been arrived at, same has been presented to Local Union #1956, which has been approved the agreement by unanimous vote. This agreement will go into effect Tuesday November 1st. [861] "I have attended the meeting of Local Union #42 of San Francisco, and #1956 of Pittsburg, and the Bay Counties District Council; also Millmen of San Jose.

(Testimony of Joseph F. Cambiano.)

"The other has to do with Santa Ana and has no bearing——

"Fraternally yours,

J. F. CAMBIANO."

Prior to visiting Redwood Manufacturing Company and the Pacific Manufacturing Company in October, 1938, I had had a discussion relative to Section 2 of a proposed 1938 contract which followed the award of July, 1938. The first time I came in contact with that particular paragraph was when Mr. Hutcheson came to San Francisco and sat in a meeting with the Employers and the Committee of 42 and 550. He was handed a copy of the contract, and when he came to paragraph 2 he stopped and handed it back and said, "This will never be approved by the General Office", and that is as far as he went into the agreement.

Exhibit 42-22, for identification, is a letter I wrote to Mr. Hutcheson, the general president.

Thereupon the letter was introduced in evidence, marked "Defendants' Exhibit 2-K", and read as follows:

"November 26, 1938

"Mr. William L. Hutcheson

General President

Carpenters' Building

Indianapolis, Indiana

"The portion dealing with this particular case is that which starts on the second page, the last paragraph:

(Testimony of Joseph F. Cambiano.)

‘Upon arriving in San Francisco I called at the Bay Counties District Council’s office and have been informed that he, Brother Ryan’—

“Brother Ryan” is written in there. I don’t know how that got in. I might ask the witness.

“Q. Did you write it in after you dictated the letter? . A. Yes. [817]

“Q. Is that your handwriting?

“A. That’s right.

“Q. You wrote in the words ‘Brother Ryan,’ is that correct? A. That is correct.

“Mr. Routzohn: —“has not signed the Millmen’s agreement. It appears now that the mill owners in San Francisco, since you advised them that material coming from Tacoma bearing the label would have to be installed by our members, he finds himself in this position. Paragraph #2, which he has insisted that Oakland be made party of, which I shall quote: ‘It is fitting that the wording of the Arbitration Board be here quoted, and its purpose and intent be, and is made part of this agreement.’

“Maintenance of fair labor conditions. It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that is deemed to be for the best interest of the community. In aid of the maintenance of fair working conditions that the parties to this agreement adopt and abide by the business policies of refusing to handle any materials coming from any mills or cabinet shops that is or shall be working contrary to the conditions of said agreement.’

(Testimony of Joseph F. Cambiano.)

"The San Francisco Planing Mill owners and Cabinet Fixtures are taking the position that this paragraph must be lived up to or wages brought down to meet those of a lower bracket. During my dealings with the Six-County I had Santa Clara, San Mateo, and Contra Costa county as well as Oakland eliminate this paragraph; but San Francisco took the position, on account of the Arbitration Award, that it was necessary to have it in the agreement. Now Bro. Ryan finds himself in this position, and he states that inasmuch as you informed the Mill Owners that materials coming from Tacoma will be installed by members of our Brotherhood, he is trying to find a way out which will be agreeable to the employers in the Bay District. [818]

"While in Oakland"—

"Does this apply? I don't think it does.

"Mr. Clark: Yes, you can read it.

"Mr. Routzohn: 'While in Oakland Mr. Edwards, Secy. of the Wood Products, informed me that 15 glaziers were ordered out by the Business Agent of the Glazier's Union, and Mr. Edwards has advised them to join the Millmen's Union. Here is the picture: Some time ago the large glass houses attempted to enter into an agreement with the Glaziers wherein they have agreed to pay \$9.68 per day with the understanding that no glazing work to be done in the shops or mills; in other words, all glazing must be done on the job site. They are now receiving \$8.80 per day. I refused to comment on this

(Testimony of Joseph F. Cambiano.)

issue as Mr. Edwards informs me that Board Member Muir has advised him to have these men go into the Millmen's Union. I might state that during the time that I organized the Pacific Manufacturing Co. of Santa Clara and the Redwood Manufacturing Co. of Pittsburg, the glaziers in these two plants were taken into our Brotherhood. Several attempts have been made by the Painters' Union to have these members join their organization. I advised both the men and the employers that these men were to remain in our Brotherhood.

"I am returning Sunday morning to Southern California. Enclosed please find receipt for last week and bill for this week."

Fraternally,

J. F. CAMBIANO."

Letter dated November 29, 1938, was written to me by the General President, Mr. Hutcheson, in reply to the letter which I just read.

Thereupon such letter was introduced in evidence as "Defendants' Exhibit 2-L", and read as follows: [819]

"November 29, 1938

"Mr. J. F. Cambiano  
Stillwell Hotel,  
Los Angeles, Calif.

"Dear Sir and Brother:

"Re that portion of your report regarding conditions at San Francisco will say that no agreement

(Testimony of Joseph F. Cambiano.)

will be approved by this office containing the quotation of the Arbitration Board.

"Furthermore it seems ridiculous that the Mill Operators in San Francisco should make any reference to the Arbitration Award inasmuch as they were so willing to agree to a lower wage scale than that given by the Arbiter.

"When you have finished with your assignments in the southern part of the State and return to the San Francisco area ~~it is my desire~~ that you take up with the Mill Operators of San Mateo, Santa Clara, Contra Costa and Oakland the signing of the agreement with the elimination of that paragraph, and you can inform Secretary Ryan that you have instructions from the undersigned to do so.

Faternally yours,

GENERAL PRESIDENT."

I recall organizing Redwood Manufacturing Company about '37, in Pittsburg, Contra Costa County. That plant operated for thirty-seven years during the entire existence open shop.

Weber Show Case and Fixture Company is located in Los Angeles. It was organized in the Carpenters' Brotherhood in the last year, and obtained a label January 20, 1941. Prior to that time they did not have a union label. I am very much familiar with the affairs pertaining to Weber Show Case and Fixture Company. I organized that plant about in 1940, and they obtained the label in 1941. It took about three years to organize that plant. For twenty

(Testimony of Joseph F. Cambiano.)

years we have had trouble with [820] them, but finally it was settled here in the last year or so Weber Show Case and Fixture Company has obtained contracts and done work in San Francisco. To the best of my knowledge they have done jobs here in San Francisco during the time they were non-union.

I attended the twenty-third General Convention of the United Brotherhood held in Lakeland, Florida, in December, 1936.

"Q. I will ask you whether or not at that time any action was taken relative to the CIO activities in this territory in interfering with the United Brotherhood unions and endeavoring to organize the planing mills in this district.

"Mr. Clark: Your Honor, we will object to any activities of the CIO, being outside any issue in this case.

"The Court: Sustained."

Thereupon the jury was excused for the purpose of proffering certain documents in evidence.

The following proceedings occurred:

"The Court: My suggestion is, you may make your offer, Judge Routzohn. I have read the document and I think I remember what it contains. You may make your offer for the record, and I will rule.

"Mr. Routzohn: I desire, however, your Honor please, to lay the foundation for the introduction of the letter, unless there can be a stipulation at this time.

(Testimony of Joseph F. Cambiano.)

"The Court: Well, you may do that if you wish.

"Mr. Routzohn: Q. Mr. Cambiano, I hand you what purports to be a circular letter of date August 11, 1937, entitled Special Circular from General Executive Board sent by the General Executive Board of the United Brotherhood of Carpenters and Joiners of America, William L. Hutcheson, Chairman, and Frank Duffy, Secretary, and ask you to state to the Court just what that paper is." [821]

"A. A circular sent out by the United Brotherhood of Carpenters—

Mr. Routzohn: No, no. It is a circular letter?

A. A letter to local unions throughout the United States and Canada.

Q. By "local unions" you refer to local unions, of course, of the United Brotherhood?

"A. Local unions, district councils, State councils and what not.

"Q. You said you were at the convention at the time it was taken up?

"A. That's right.

Q. At that time was there a dual organization known as the CIO, or Committee of Industrial Organizations, that was making any organization efforts and inroads on the locals?

A. There was.

Q. Of the United Brotherhood of Carpenters and Joiners of America? A. There was.

Q. Was that true in this district as well as other districts throughout the Pacific Coast?

(Testimony of Joseph F. Cambiano.)

A. Yes.

Q. Including Washington and Oregon?

A. Yes.

Q. From 1936 on, has there been a constant and continuous organizing effort opposed to the organization efforts of the Brotherhood presented by the CIO organization?

A. There has been.

"Mr. Clark: Your Honor, we will object and ask the answer go out.

"The Court: The answer may go out. What is the objection?

"Mr. Clark: Objected to as irrelevant and immaterial to any issue in this case.

"The Court: Sustained.

"Mr. Clark: I move to strike out the other answers. I thought he was laying a foundation to introduce this circular.

"The Court: I thought so, too.

"Mr. Clark: We move to strike it out. [822]

"Mr. Routzohn: That was my purpose. I was trying to make it doubly sure we were getting the proper foundation.

At this time, your Honor please, we wish to introduce into evidence—let us have that marked for identification—introduce in evidence this circular letter which has been marked for identification Defendants' Exhibit 2-M.

"Mr. Clark: We object, your Honor, on the ground, first, that it doesn't meet the case in chief;

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(Testimony of Joseph F. Cambiano.)

second, that it is self-serving; and, third, it is immaterial and irrelevant to any issue involved in this case.

"The Court: Objection sustained.

(The circular letter was marked "Defendants' Exhibit 2-M for identification.")

**DEFENDANTS' EXHIBIT 2-M**

**FOR IDENTIFICATION**

**UNITED BROTHERHOOD OF CARPENTERS  
& JOINERS OF AMERICA**

Instituted August 12th, 1881

Carpenters' Building  
222 East Michigan Street  
Indianapolis

August 11, 1937

**SPECIAL CIRCULAR FROM GENERAL  
EXECUTIVE BOARD**

To the Officers and Members of all Local Unions,  
District, State and Provincial Councils of the  
United Brotherhood of Carpenters and Join-  
ers of America.

Greetings:—

Acting on instructions of our Twenty-third Gen-  
eral Convention held in Lakeland, Florida, in De-  
cember, 1936, a Sub-Committee of the General Ex-

(Testimony of Joseph F. Cambiano.)

Executive Board visited the lumber and sawmill operations in the Northwest. While there, meetings were held with representatives of our District Councils of the Western States, as well as operators who employ our members. The Committee endeavored to get first hand information as to the best manner of handling the organization of this branch of our industry, so as to secure the best possible results for the men working in the woodworking industry, both in wages and working conditions, and the proper relationship of these men in our organization.

The Committee found that there were Communist and adverse influences boring from within for the purpose of trying to destroy the activities of the United Brotherhood, and the building up of a dual International Union of Woodworkers, opposed to the Brotherhood, but before the Subcommittee could report its findings and recommendations to the General Executive Board, the C. I. O. had already issued a charter, or certificate of affiliation, dated July 20, 1937, to a dual organization called, "International Woodworkers of America."

This dual organization has already been trying to induce our Local Unions and members to secede from the United Brotherhood, and so to combat this dual movement it becomes necessary to notify all our Local Unions, District, State and Provincial Councils of the Brotherhood that our members

(Testimony of Joseph F. Cambiano.)

must not handle any lumber or mill work manufactured by any operator who employs C. I. O. or those who hold membership in an organization dual to our Brotherhood.

Do not be misled by any newspaper articles that the entire lumber and sawmill industry has gone C. I. O. Just the opposite is the truth. We have thousands and thousands of loyal members in the Northwest who are battling for the United Brotherhood of Carpenters and Joiners of America, and will continue to do so, and it makes it absolutely necessary for all our members to give them their support by refusing to handle material coming from C. I. O. operations.

The C. I. O. has challenged us, and we must meet that challenge without hesitation. Therefore, you are instructed to appoint a committee to inform your employers and the lumber dealers that our members will refuse to handle any dual or C. I. O. products.

A list of operations using this class of labor will be sent to you from time to time as the situation may develop, but appoint your committees at once so that our employers will be informed in plenty of time to protect themselves before placing their orders for any lumber or millwork.

Kindly comply with these instructions at once and inform the General President of the names and addresses of your Committee so that the proper information can be sent direct to them as well as to you, in order to secure quick action.

(Testimony of Joseph F. Cambiano.)

Let your watchword be "No C. I. O. lumber or millwork in your district" and let them know you mean it.

Fraternally yours

GENERAL EXECUTIVE  
BOARD

WM. L. HUTCHESON

Chairman

FRANK DUFFY

Secretary

"Mr. Routzohn: Q. I hand you a paper writing of date August 21, 1939, which has been marked for identification Defendants' Exhibit 2-N, and ask you to state to the Court just what that paper is.

"A. This here is the agreement sent out by the Congress of the Industrial Organizations from Washington, D. C., a letter to all of the contractors in California.

"Mr. Routzohn: I would like to have your Honor see this.

"The Court: Yes.

"Mr. Routzohn: That agreement is sent by whom and in what capacity?

"The Court: This is headed "For Release Morning Papers Wednesday, July 26, 1939."

"Mr. Routzohn: Attached to that, your Honor, is—

(Testimony of Joseph F. Cambiano.)

"The Court: "Rules and Regulations of the United Construction Workers Organizing Committee" is attached to the newspaper release.

"Mr. Routzohn: Yes, the proposed agreement.

"The Court: Did you see it? [823]

"Mr. Clark: I just saw the front page.

"The Court: Have you an objection?

"Mr. Clark: I thought it was a newspaper release.

"Mr. Routzohn: That is signed by A. D. Lewis.

"A. That's right.

Q. Who is A. D. Lewis?

A. A brother of John L. Lewis.

Q. What is his position?

A. President—

Q. A. D. Lewis, Denny Lewis.

"A. He is supposed to be president of the construction department of the CIO.

Q. The construction department of the CIO, how does that compare with the organization of the United Brotherhood of Carpenters and Joiners of America?

"Mr. Clark: We object to this line of questioning as immaterial and irrelevant to this case, as to any comparison between a setup of the CIO and the A. F. of L.

"The Court: Sustained.

"Mr. Routzohn: Q. Is it or is it not a dual organization to your own organizations that are defendants in this case?

"A. Positively—

(Testimony of Joseph F. Cambiano.)

"Mr. Clark: We object to that, your Honor, and move the answer go out. Object to it as immaterial and irrelevant.

"The Court: It may go out. Objection sustained. Has it been marked?

"Mr. Routzohn: I wish to offer this in evidence, as well as Exhibit 2-M.

"Mr. Clark: We object to 2-N on the ground it is immaterial and irrelevant and appearing, the first part of it, in a newspaper release and the other, the rules and regulations of the CIO, which is not a party in this case, not involved here; does not meet the issues in the case.

"The Court: Sustained.

"Mr. Routzohn: Q. Well, those rules and regulations were [824] a part of the organization efforts of the CIO, were they?

"A. That's right.

"Mr. Clark: We object to that and move it go out. Object as immaterial and irrelevant.

"The Court: The answer will go out. Objection sustained.

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(Testimony of Joseph F. Cambiano.)

**DEFENDANTS' EXHIBIT 2-N FOR  
IDENTIFICATION**

(Clamped): Aug. 21, 1939, Rec'd.

Congress of Industrial Organizations

1106 Connecticut Avenue, N. W.

Washington, D. C.

District 3582

For Release morning papers, Wednesday, July 26, 1939

President John L. Lewis of the Congress of Industrial Organizations today announced the formation of the United Construction Workers Organizing Committee, for the purpose of organizing the workers in the construction industry.

The Chairman of the new CIO committee is A. D. Lewis, Assistant to the President of the United Mine Workers of America. The other members include Philip Murray, Chairman of the Steel Workers Organizing Committee and Vice President of the United Mine Workers; James B. Carey, President of the United Electrical, Radio & Machine Workers and Secretary of the CIO; R. J. Thomas, President of the United Automobile Workers of America; and Sherman H. Dalrymple, President of the United Rubber Workers of America.

Headquarters will be opened August 1 in Washington, D. C., on the fifth floor of the United Mine Workers Building.

(Testimony of Joseph F. Cambiano.)

In announcing the formation of the United Construction Workers Organizing Committee, President Lewis declared:

"There are some three million workers employed in the construction industry, of whom less than one-third are organized.

"Since the CIO was formed, we have received thousands of requests from individuals and groups of construction workers throughout the country asking for organization and affiliation with the CIO.

"These requests have come to us because the construction workers desire a modern form of organization which will bring the benefits of collective bargaining to all the workers, will eliminate jurisdictional disputes and will improve their wages and working conditions.

"Acting under the constitution of the Congress of Industrial Organizations, which calls for the effective organization of the working men and women of America into labor unions for their mutual aid and protection, the executive officers of the CIO have therefore decided to establish the United Construction Workers Organizing Committee.

"The work of this Committee will be directed by Chairman A. D. Lewis, who will be authorized to issue charters to construction workers who desire to become affiliated with a modern industrial union in their industry.

"A large number of Local Industrial Unions

(Testimony of Joseph F. Cambiano.)

have already been chartered by the CIO in this industry and they will be transferred to the UCWOC at once, to compose its initial membership.

"The United Construction Workers Organizing Committee will be organized on an industrial basis. Dues will be \$1.50 per month for all members in all classifications of employment in the construction industry. No initiation fees are being charged.

"The aim of the United Construction Workers Organizing Committee will be to organize all construction workers into a powerful industrial union which will abolish the many evils and abuses that have beset the industry in the past and improve wages and working conditions of all those employed in it.

"Special provisions will be made by the Committee for the elimination of unauthorized strikes, jurisdictional disputes and lockouts, and for the peaceful adjudication of labor disputes.

"A system of transfer cards will be arranged for the benefit of union members, and arrangements will be made under the union agreements for training skilled mechanics so that workers may not have to learn their trades on non-union jobs.

"The declared objects of the United Construction Workers Organizing Committee are as follows:

"(1) To unite into one organization, regardless of creed, color, nationality or classification of em-

(Testimony of Joseph F. Cambiano.)

ployment, all workers in and around construction work.

“(2) To increase wages and improve the conditions of employment of the members of the organization and to secure through proper negotiations joint agreements covering wages, hours and working conditions of its members.

“(3) To stabilize the construction industry through the elimination of unauthorized strikes, jurisdictional disputes and lockouts, and to provide for adjudication of disputes arising between employers and employees in the industry.

“(4) To provide for the education and better living conditions of our members and their families and to obtain a greater participation in the economic and political affairs of our country.”

### UNITED CONSTRUCTION WORKERS ORGANIZING COMMITTEE

Affiliated with C. I. O.

Fifteenth and Eye Streets, N. W.

Washington, D. C.

Aug. 21, 1939, Rec'd

### RULES AND REGULATIONS OF THE UNITED CONSTRUCTION WORKERS ORGANIZING COMMITTEE

Innumerable requests from construction workers throughout the United States for affiliation with the C. I. O. have been received and given

(Testimony of Joseph F. Cambiano.)

consideration by the C. I. O. In order to provide an opportunity for these workers to join an Organization of their own choosing, free from the many evils that have beset the industry in the past, excessive dues and exorbitant initiation fees, the C. I. O. has organized the United Construction Workers Organizing Committee. The Committee herewith promulgates the following Rules and Regulations which shall govern the activities of the Organization.

(1) The objects of the Organization shall be:

To unite into one Organization, regardless of creed, color, nationality, or classification of employment, all workmen employed in and around construction work;

To increase wages and improve the conditions of employment of the membership of the Organization and to secure through proper negotiations joint agreements covering the wages, hours and working conditions of its members;

To stabilize the construction industry through the elimination of unauthorized strikes, jurisdictional disputes and lockouts, and to provide methods for adjudication of disputes arising between employer and employees in the industry; and,

To provide for education and better living conditions for our members and their families and to obtain a greater participation in the economic and political affairs of our country.

(2) This Organization shall be known as the

(Testimony of Joseph F. Cambiano.)

United Construction Workers Organizing Committee.

(3) Charters shall be issued to Local Unions of construction workers where, in the opinion of the Committee, it is to the best interests of the Organization to do so.

(4) Any ten individuals eligible for membership may apply to the Committee for a charter, which may be granted upon the payment of a proper fee to cover the purchase of necessary supplies.

(5) The officers of a Local Union shall be composed of a President, Vice-President, Recording Secretary, Secretary-Treasurer, and a Board of Trustees composed of six members, representative of the different classifications of employment in the construction industry.

(6) The duties of the President shall be to preside over all meetings of the Local Union and to conduct the meetings in accordance with Robert's Rules of Order. He shall represent the Local Union, as hereinafter provided, in the adjudication of grievances and in the making of contracts and perform such other duties as may properly be assigned him by the Local Union. He shall make appointments to committees, and he shall also appoint such Job Stewards as may be necessary, subject to the approval of the Board of Trustees, and countersign all checks authorized by the Local Union.

(Testimony of Joseph F. Cambiano.)

(7) The duties of the Vice-President shall be to assist the President in all of his functions and to assume his position in case of the President's absence.

(8) The duties of the Recording Secretary shall be to keep the minutes of the meetings of the Local Union and handle all of the official correspondence and such other duties as may hereinafter be provided. He shall also have custody of the Local Union seal, and shall be held responsible for any misuse of same.

(9) The duties of the Secretary-Treasurer shall be to take charge of all of the monies and property of the Local Union subject to the approval of the Board of Trustees. He shall be responsible for the collection of all monies due the Local Union from its members or others, and he shall receive from the Business Agent, or other authorized agents of the Local Union, all monies collected by them and due the Local Union for monthly dues and initiation fees, and keep an itemized record of all incoming and outgoing money and of accounts receivable and payable. He shall sign all checks for the disbursement of the funds of the Local Union. He shall transmit, not later than on the tenth day of each calendar month, to the Comptroller of the Committee, all monies due the National Organization from the Local Union on account of the monthly membership dues and initiation fees collected during the preceding calendar month. He

(Testimony of Joseph F. Cambiano.)

shall also be responsible for the transmittal to the Comptroller of the Committee of any ~~other~~ funds owing to the National Organization when due.

A statement shall be rendered accompanying the transmittal of membership dues and initiation fees, showing the number of monthly dues payments and initiation fees collected by the Local Union, including a statement showing the financial condition of the Local Union, as of the last day of the preceding calendar month. He shall be bonded under a surety bond approved by and in the amount determined by the Committee.

(10) The Board of Trustees shall assume jurisdiction over all of the property of the Local Union and shall be held responsible for the proper conduct and the handling of the finances of the Local. The Board of Trustees shall also, semi-annually, audit the accounts of the Local Union and file copies of its report with the Local Union and the Committee.

(11) The Local Union, with the approval of the Committee, may elect from its membership a Business Agent, who shall devote his full time to the duties of his position and who shall be paid at a rate to be determined by the Local Union. This rate must not exceed \$60.00 per week with authorized expenses. Such expenses must be incurred within the jurisdiction of the Local Union, except that authorization may be given by the Local Union to the Business Agent to attend meetings outside

(Testimony of Joseph F. Cambiano.)

of its jurisdiction and to incur expenses in connection therewith. His duties shall be to adjudicate any grievances that may be referred to him by the Local Union or Job Stewards hereinafter provided for. He shall be charged in conjunction with the Job Stewards with the collection of membership dues and initiation fees each month and turn over all such monies collected to the Secretary-Treasurer of the Local Union. He shall ascertain and keep in constant touch with construction activities within the jurisdiction of his Local Union, attempt to secure employment on any construction job for his membership, and make a constant effort to prevail upon any construction workers within the limits of his jurisdiction to join the United Construction Workers Organizing Committee. He shall be bonded under a surety bond approved by and in the amount determined by the Committee.

(12) A Job Steward must be appointed on each and every construction job by the President of the Local Union, subject to the approval of the Board of Trustees. The Job Steward, in conjunction with or in lieu of the Business Agent, shall accept applications for membership, collect initiation fees and dues and adjudicate with the proper employer officials any grievances that may arise upon the job.

(13) The Committee shall have the right to determine the date of imposition and the amount of the initiation fee to be charged to individuals

(Testimony of Joseph F. Cambiano.)

making application for membership in the United Construction Workers Organizing Committee.

(14) When the Committee determines that an initiation fee shall be charged, the Committee shall have full authority to determine the disposition of the initiation fee.

(15) Dues to the United Construction Workers Organizing Committee shall be \$1.50 per month for all members, \$.50 of which shall be retained by the Local Union and \$1.00 forwarded to the Comptroller of the Committee.

(16) The Secretary-Treasurers of the Local Unions shall be provided with dues books and monthly statements by the Comptroller of the Committee at cost, plus handling charges. The Secretary-Treasurers of the Local Unions shall be held accountable for all monthly dues stamps and dues books. Dues books shall be carried at all times by members of the Organization, in order that they may be inspected when requested by union agents, or other authorized persons.

(17) Monthly dues to a Local Union are due upon the first day of the month, and a dues stamp shall be issued upon payment.

(18) The Committee shall have the authority to establish State or Regional Departments, under a Director to be appointed by the Committee. Such Director shall be responsible for all of the organizing and legislative work within his jurisdiction and shall work under the immediate direction of the Committee. The State Director shall assist Local

(Testimony of Joseph F. Cambiano.)

Unions in the making of agreements and contracts and shall act as hereinafter provided in the adjudication of disputes when they are officially referred to him by either the Committee or the Local Union.

(19) No Local Union shall issue a strike notice without first receiving authority to do so from the United Construction Workers Organizing Committee.

(20) The Organization shall make every effort to stabilize labor conditions in the construction industry and eliminate strikes and stoppages of work during the adjudication of grievances. It is therefore suggested that the following be inserted, where possible, in all contracts made between Local Unions and contractors, or contractor associations:

“Should differences arise between construction workers and the contractor, in regard to wages, working rules and other conditions of employment, or should any local trouble of any kind arise upon any job, there shall be no suspension of work on account of such differences, and an earnest effort shall be made to settle such differences immediately: First, between the aggrieved party and the construction foreman; Second, through the Job Steward and/or the Business Agent and the construction foreman; Third, through a Committee, consisting of the President of the Local Union, Job Steward and/or the Business Agent, and the General Manager of the construction company; Fourth,

(Testimony of Joseph F. Cambiano.)

should the Committee and the General Manager of the construction company fail to agree, the matter shall be referred to the State Director, who shall make every effort to adjudicate the dispute with the construction company.

"Should this procedure fail, the State Director, on behalf of the Union, may agree with the construction company upon the selection of an umpire to decide the case. At any stage of the procedure, the Committee, or its designated agents, may participate in the adjudication of the dispute. Pending the adjudication of any dispute, construction workers shall not cease work. When a joint decision is reached at any stage of the procedure, it shall be binding upon both parties thereto and shall not be subject to reopening by either party, except by mutual agreement."

(21) In order to eliminate so-called jurisdictional disputes between the several classifications of employees upon any construction job, every effort should be made to establish a procedure whereby any workman doing work, for which a scale of wages is provided, shall be paid either his regular scale of wages, if the work performed by him calls for a lower scale, or he shall be paid at the higher scale if the class of work calls for a higher scale of wages. This rule may be amplified in any agreement between a Local Union and any contractor or contractor association.

(Testimony of Joseph F. Cambiano.)

(22) The Committee recognizes the necessity for the proper and adequate training of journeymen workmen in the construction industry. Local Unions shall make rules to govern the admission into Local Unions with full membership workers in helper classifications and the employment of helpers upon a practical basis on all construction jobs.

(23) All Local Union officers, Business Agents and other permanent committees, shall be elected at the last meeting in June of each year by a majority vote of the members present at the meeting and shall serve until their successors are elected and qualified, at which time all money, official records and documents, and all property belonging to the Local Union, shall be turned over to such successors. No person shall hold two elective offices in any Local Union at the same time. This rule shall also apply to elected Business Agents.

(24) Except in newly organized Local Unions, all officers and Business Agents to be eligible for election must attend one-half of the meetings of their Local Unions for six months prior to the election and must be employed in or around construction work, or by the Organization.

(25) The Committee shall have the authority to remove from office any officer or agent of any Local Union whom it shall find guilty of malfeasance, or misfeasance, or misappropriation of funds, and such person shall be disbarred from holding any office in the Organization thereafter, until all rights

(Testimony of Joseph F. Cambiano.)

and privileges are restored to him by the United Construction Workers Committee. Such persons shall also be held accountable for the return of the funds so misappropriated.

(26) The Committee shall have the right to audit and inspect all accounts and other books and records of any officer or agent of the Local Union and of the National Organization.

(27) All Local Unions shall be supplied transfer card books by the Comptroller of the Committee at cost, plus handling charges. Transfer cards shall be issued to members wishing to transfer their membership from one Local Union to another. Transfer cards shall be signed by the President, the Recording Secretary and the Secretary-Treasurer of the Local Unions; and shall bear the seal of the Local Union. No card shall be issued to any member unless all dues, initiation fees, and assessments are paid in full to the date of issuance. No transfer card shall be recognized by any Local Union, except transfer cards supplied by the Comptroller's office.

(28) Any member of a Local Union securing a job under the jurisdiction of another Local Union shall immediately transfer his membership to the Local Union having jurisdiction over the construction work where he is employed.

(29) Any member who is three months in arrears in his dues or assessment shall automatically be dropped from the membership rolls of the Organization.

(30) The Committee, at its discretion, may at

(Testimony of Joseph F. Cambiano.)

any time appoint an Organizer to act as a Business Agent for any Local Union. The Local Union must thereupon recognize such Business Agent as the official representative to carry out the duties of the Business Agent as hereinbefore set forth.

(31) The Committee shall have the authority to suspend or revoke the charter of any Local Union, after a full investigation and hearing, because of violations of or failure to comply with any of the Rules and Regulations or minor objectives of the National Organization.

In any Local Union should disband or secede, or should its charter be revoked or suspended, then the charter and all supplies, funds, and real and personal property and collective bargaining agreements, in its possession, or to which it may be entitled, shall be taken over by the Committee, provided that any remaining members of such Local Union in good standing are given appropriate transfer cards.

(32) Local Unions shall comply with all instructions that may be issued by the Committee from time to time, in regard to the use of forms and the maintenance of financial and other records.

(33) These Rules and Regulations may be changed from time to time by, and in the absolute discretion of the Committee. The Rules and Regulations shall govern all Local Unions and agents and employees of Local Unions, State and Regional Departments, and of the National Organization. Local Unions may make rules or adopt procedure

(Testimony of Joseph F. Cambiano.)

to govern themselves, provided that they are not in conflict with the Rules and Regulations of the Committee.

A. D. LEWIS

Chairman

United Construction  
Workers Organizing  
Committee

GARDNER H. WALES

Comptroller

United Construction  
Workers Organizing  
Committee

"Mr. Routzohn: Another release your Honor please, and a letter, a circular letter which we will have marked Defendants' 2-0 for identification.

"Mr. Clark: Is this along the same line?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"Mr. Routzohn: Except that it involves—

"Mr. Clark: Well, it is a CIO circular, isn't it?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"The Court: Sustained.

"Mr. Routzohn: Q. I hand you now Defendants' Exhibit 2-0 and ask you to state just what that is so we can get it in the record, is all.

"A. This is the circular that was circulated in

1074 *Lumber Products Assn., Inc., et al.*

(Testimony of Joseph F. Cambiano.)

some of the Congress of Industrial Organization  
the construction industry.

"Mr. Routzohn: We offer Defendants' Exhibit  
2-0.

"The Court: Is it along the same line?

"Mr. Clark: We object to it, your Honor; it is  
a CIO circular.

"Mr. Routzohn: Yes.

"The Court: Objection sustained.

**DEFENDANTS' EXHIBIT 2-0 FOR  
IDENTIFICATION**

Sacramento

C.I.O.

(Copy)

Phone Capital 5044

**EDWARD J. CHERRY, President**

**J. T. DUDLEY, Secretary**

**UNITED CONSTRUCTION WORKERS  
UNION, LOCAL 66**

Affiliated with Congress of Industrial  
Organizations

821½ J Street

Sacramento, California

January 18, 1940

To all Contractors and Builders

Gentlemen:

We wish to call to your attention the fact that  
the United Construction Workers Organizing Com-

(Testimony of Joseph F. Cambiano<sup>1</sup>)

mittee has been organized on a nationwide scale.

We are attempting to eliminate jurisdictional disputes in the building industry by having all members of a construction crew belong to ONE union, instead of 26 or 27 different crafts, with the attendant friction between these crafts. It is our opinion that under this system, building costs can be considerably reduced and, that this reduction will not only cause an increase of business to the contractor but, will make for steadier employment for the men. The value of having an industrial union, whereby men can move to any part of the job without fear of a jurisdictional dispute being caused, along with the special provisions which have been made for the settlement of grievances, can be readily seen by any one familiar with construction work.

We are pleased to announce that the Sacramento Local #66 of the United Construction Workers Union (CIO) has available, and can furnish competent men for all branches of the construction industry.

Further information may be obtained at the above address, by telephone or letter.

Very truly yours,

EDWARD J. CHERRY,

President

ROBERT CHITWOOD,

Secretary

(Testimony of Joseph F. Caffabiano.)

(Copy)

## CONSTRUCTION AND BUILDING TRADES WORKERS

### ATTENTION!!!

Local #66 of the United Construction Workers Union is making a drive for membership on the following points.

1. No initiation fees at present.
2. Low dues
3. Job protection, which really protects the workers
4. All crafts in ONE union. This eliminates jurisdictional disputes, and the necessity of paying a new initiation fee everytime you want to change your job.
5. A chance for every worker to go to a higher paid job, if he is capable of handling it.
7. Special provisions for handling grieyances.
8. No "kick-back" of your wages.
9. Organizing workers instead of the Boss.
10. Higher wages
11. Chance to transfer to any CIO union without having to pay transfer fees or new initiation.
12. Closed shop contract with the Low Cost Housing Builders of Sacramento. More contracts coming up in the near future.
13. A Union instead of an employment agency.

These are some of the points on which we are building this union. Further information will be

(Testimony of Joseph F. Cambiano.)

given those interested at the meetings of Local #66 which are held every 2nd and 4th Wednesday of the month. Next meeting is, January 24th, 1940 at 7:00 P.M. at 821½ Jay Street.

Organizing Committee

Local #66 UCWOC

821½ Jay Street

Sacramento

(Copy)

January 1, 1940.

For Immediate Press Release

The Sacramento Citizens Committee on Slum Clearance and Low Cost Housing was formed in January 1939. Since its formation a broad study has been made of housing conditions, especially, in Sacramento County. We have found that for many years the building industry has not been building homes that can be purchased by families with modest or low incomes. The result is that the United States is Millions of homes behind in a building program that would decently house our people. For the richest country in the world, this lack of decent homes is a national disgrace. Certainly we have the materials, and the labor necessary to decently house our people. Our present administration through the United States Housing Authority has made wonderful progress not only in bringing the facts before the people, but also in actual cleaning-up of the slum districts.

(Testimony of Joseph F. Cambiano.)

Unfortunately through lack of cooperation in the last session of Congress this program has been badly delayed, and powerful interests are using every effort to sabotage the program completely.

The one item which can contribute most toward a return to prosperity and jobs for the unemployed is a building program. The demand for building material reaches into many industries, such as lumber, steel, cement, brick, and other materials too numerous to mention. Due to lack of finance for the U.S.H.A. little could be accomplished at this time by that body. We began a study of what might possible be done in some other way. We found that although the reduction of interest rates has been accomplished by the F.H.A., that with possibly a few exceptions, decent homes are yet beyond the reach of those with low incomes. We have come to the conclusion that four major items are mainly responsible for this conditions, they are:

- (1) High cost of material
- (2) High Contractors profits
- (3) High cost of labor due to jurisdictional disputes of craft unions
- (4) Profits of Real Estate operators

(Number 1) can be substantially reduced by buying materials in large quantities (Number 2) Contractors profits will be *eliminated*. (Number 3) Reduction of labor costs by using members of the C.I.O. United Construction Workers Union who will be paid the prevailing wage scale and possibly higher, but through the elimination of jurisdictional disputes will make it possible to pay

(Testimony of Joseph F. Cambiano.)

higher wages while at the same time making for more efficient building progress, because of the nature of industrial unions. (4) Real Estate Sales commissions can be eliminated.

Actual figures prepared by experts convince us that by taking advantage of these things, we can build 4 room, 2 bedroom homes that will sell under F.H.A. terms for a small down payment and less than \$17.00 per month, payments on the house.

Compared with the rent being paid for much less desirable homes in this district, we are convinced there will be a great demand for such homes and will ultimately result in the elimination or remodeling of places in which these people now live. Fortunately, in the Sacramento District there is land available at a reasonable price which can be utilized for a low cost housing project. A group of citizens who believe in decent homes, are cooperating to put the plan in effect. A tract of land has been secured. Our building crews will start to work the week of January 1st. Homes priced under \$2000.00, with payments approximately \$17.00 per month, and a small down payment, will then shortly, be available. These modern homes will be within the range of the small regular income groups. }

We are not *condemning* or criticizing the contractors or Real Estate firms. We know their functions are necessary to a community. However, ~~they~~ have failed to produce homes for the class of

(Testimony of Joseph F. Cambiano.)

people who need them more than any others. In order to make this plan successful these profits must be eliminated.

We do not contend that this plan, even if put into effect on a nation-wide scale would be a solution to the whole housing problem. This plan due to F.H.A. regulations can only apply to those who have a sufficient steady income to qualify for the F.H.A. loan. For those who have no regular income, are another problem and one that will take governmental action to solve.

We also wish to call attention to the fact that such a program could be used by States and Counties. The money being paid by States and Counties to house relief clients would in a short period of years liquidate the cost and at the same time would move these people from the slums into decent homes. The *people* sponsoring this program have not the slightest idea of a profit. They propose to build homes that will be within the reach of those with low incomes, and at the same time create jobs for unemployed construction workers.

We cannot too strongly stress the importance of the cooperation and help of the House Committee of the National Congress of Industrial Organizations (CIO).

President Roosevelt has with truth, said, that one-third of our nation is ill-housed. We say something can be done about it, and we are going to

(Testimony of Joseph F. Cambiano.)

make a determined effort to do something in our own County.

(Signed) J. T. DUDLEY,

uopwa-34

eje.

Secretary-Treas.

Sacramento Industrial Union  
Council (CIO)

Chairman

Sacramento Citizens Com-  
mittee on Slum Clearance  
and Low Cost Housing

Address: Sacramento Industrial Union Council,  
821½ Jay Street, Sacramento, California.

“Mr. Routzohn: Q. I hand you a paper writing which has been marked Defendants' Exhibit 2-P for identification and ask you to state what that is, Mr. Cambiano.

A. A communication from the General Contractors Association of Contra Costa County. [825].

Q. Having to do with the CIO affairs?

A. Yes.

Q. In this very district in Contra Costa County?

A. Yes, Sir.

“The Court: Has it been marked?

“Mr. Routzohn: It has been marked for identification. I wish to offer it in evidence at this time, your Honor.

“Mr. Clark: We will object, your Honor, on

(Testimony of Joseph F. Cambiano.)

the same grounds; the same type of offer that he has made, CIO.

"The Court: Sustained. Is that all?

"Mr. Routzohn: Except a statement that I would like to make at this time, if your Honor please.

"The Court: Very well.

"Mr. Routzohn: I will be very brief. That is what my individual thought has been throughout the trial of this case that there might be some claim made by the counsel for the prosecution that the evidence in this case does not show, or there is a lack of evidence on our part to the effect a labor dispute existed throughout the period of the indictment.

"The Court: I don't care to hear any argument on that now.

"Mr. Routzohn: It is merely to show that there was a potential labor dispute existing in addition to the one with the employers that are involved in this case.

"The Court: All right. Well, I, of course—

"Mr. Routzohn (interrupting): Your Honor, I have no ulterior motives at all.

"The Court: Oh, I appreciate that.

"Mr. Routzohn: Incidentally, there have been some—in addition to that, there has been a dual organization here and dual efforts which accounted for the refusal to handle, if your Honor please, a great deal of work that came from the North-

(Testimony of Joseph F. Cambiano.)

west, many of the things that have been testified to in this case.

"The Court: Yes. Well, have you finished with your evidence? [826]

"Mr. Routzohn: Yes, your Honor."

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DEFENDANTS' EXHIBIT 2-P FOR  
IDENTIFICATION

(Copy)

GENERAL CONTRACTORS' ASSOCIATION  
OF CONTRA COSTA COUNTY

Richmond, Calif.,

April 29, 1940.

My Dear Member:

This is your official notice of a Special Meeting to be held in Martinez Thursday, May 2nd, in Memorial Hall, 7:30 p. m.

The time has come, we must make up our minds as to what we are to do about a Labor Agreement for the coming year, as you know our present agreement with A. F. of L. expires this coming May 14, 1940.

President *Enes* is very anxious to have the full membership attend this meeting; he has also requested me to ask each member to bring as many Contractors as he can as guests. You certainly know some that are not members; bring them with you.

(Testimony of Joseph F. Cambiano.)

The C. I. O. has offered a very attractive agreement to this Association and they are very desirous of having the agreement.

You know what the set up is now. Each craft has its own Union with each craft working different hours and for a different wage.

Under this other arrangement all work would be carried on with the same hours per day with all crafts in the same Union and the Contractor would be able to hire Direct any man or craftsman that he so desired.

In order that we don't make any costly errors in our bargaining, it is important that you attend this meeting and bring a few Contractor friends with you. In this manner we will be able to determine what the wish of the majority is and be able to make a wise decision.

Thursday, 7:30 p. m. War Veterans Memorial Hall, Martinez, California, May 2, 1940.

Sincerely yours,

Secretary

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Thereupon the proceedings were resumed before the jury, as follows:

I am one of the defendants in the case. I didn't ever enter into any agreement, verbal or otherwise, with anyone, employers or employees, to prevent the flow through interstate commerce of woodwork.

(Testimony of Joseph F. Cambiano.)

and patterned lumber into the Bay Area. I positively do not know and have not heard of any agreement of any kind, verbal or otherwise, made by anyone, any of the union men or any of the defendant employers in this district. There has not been, so far as my knowledge goes, any agreement other than the agreements that have been testified to in this case as signed agreement with the employers.

"Q. Have you ever at any time entered into an agreement with any intention whatsoever of violating the Interstate Commerce Law?

"A. No, I have not.

"Mr. Clark: Just a minute, we move to strike out the answer as intent is immaterial.

"The Court: Let it go out. The objection is sustained."

#### Cross-Examination

By Mr. Clark:

I testified about a contract with the Pacific Manufacturing Company. There was no controversy between Ryan and the Pacific at any time with the exception of when the differential in wages went into effect. I think that is the time I testified about. The controversy between Pacific and Ryan had to do with one job in San Mateo County that Pacific Manufacturing Company were figuring under a lesser scale than what was being paid under the Award of Arbitration.

(Testimony of Joseph F. Cambiano.)

I couldn't say just the date offhand it started. I believe I said I got [827] the telegram from Mr. Hutcheson the latter part of September. Exhibit 39 is the one, dated September 7.

I reported shortly after that to Santa Clara. I think there was a letter followed up on that; I was South at the time and when I caught up with my work I came up, shortly after. If the letter read to that effect I was there about September 13. I could not swear to that signature on Exhibit 39-6.

The signature was stipulated, and thereupon letter of September 13, 1938, was introduced as Exhibit 39-6, and was read as follows:

"Mr. W. L. Hutcheson, General President, Carpenters' Building, 222 East Michigan Street, Indianapolis, Indiana.

"Dear Sir and Brother,

"On September 6th I wired you requesting that you assign General Representative J. F. Cambiano to this District on a matter pertaining to a protest from the Pacific Manufacturing Co. Santa Clara, Calif.

"Contractors in the Bay Counties District Council jurisdiction are being told that if they use millwork from the Pacific Manufacturing Co. that Brotherhood members will not install or work same.

(Testimony of Joseph F. Cambiano.)

"The above mentioned firm operates in agreement with this Council and their products bear the Label of our Brotherhood.

"It is the opinion of this Council that any contractor or group of contractors has the right to refuse to accept bids from any mill or cabinet manufacturing concern in the interest of 'Home Industry,' but when our Brotherhood members agree not to work any material bearing the label of our Brotherhood then that is something else.

"The management of the Pacific Manufacturing Co. has protested the action of the Bay Counties District Council, to this [828] Council, in attempting to ban union label millwork.

"Bro. J. F. Cambiano dropped in here on his way to Los Angeles and no doubt he will make his report on the situation to you.

"By this time you probably have a copy of the San Francisco Mill Agreement, please note paragraph 17.

"The General Office and the Santa Clara Valley District Council spent too much money and energy combatting the non-union American Plan set up here for 15 years and at this time our membership does not intend to lose all that it has gained after a long and bitter struggle.

"The situation is a serious one and this Council requests that Representative Cambiano be assigned

(Testimony of Joseph F. Cambiano.)

to the Santa Clara and Bay Counties Districts until such time as the entire mill situation can be straightened out.

"Fraternally yours,

"SANTA CLARA VALLEY  
DISTRICT COUNCIL,  
M. L. BLANCHFIELD,  
Secty.'"

I was assigned.

Section 17 of the 1938 agreement that is referred to reads:

"In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by sawmills, mills, or cabinet shops, or their distributors, that do not conform to the rates of wage and working conditions of this agreement. The purchase, working and sales of the following products is excepted."

Thereupon the Union Defendants stipulated that the signature to Exhibit 39-7 is M. L. Blanchfield and Exhibit 39-7 was introduced in evidence as to the Union defendants, and was read as follows:

"This is likewise a letter on the letterhead of the District [829] Council of Carpenters, San Jose, California, sent to Mr. W. L. Hutcheson,

(Testimony of Joseph F. Cambiano.)

"September 14, 1938.

"Mr. W. L. Hutcheson,  
General President,  
Carpenters Building,  
222 East Michigan Street,

"Dear Sir and Brother:

"Enclosed please find copy of letter from the  
Pacific Manufacturing Company, of Santa Clara,  
California, which is self explanatory.

"You will note the request made by that Com-  
pany.

"Trusting this matter can be adjusted, I remain,

"Faternally yours,

SANTA CLARA VALLEY  
DISTRICT COUNCIL  
OF CARPENTERS

By M. L. BLANCHFIELD,  
Secretary.

"The enclosure, Exhibit 39-8 is: "Pacific Manu-  
facturing Company, Santa Clara, Calif., Septem-  
ber 13, 1938

"Mr. M. L. Blanchfield,  
% Santa Clara Valley District  
Council of Carpenters,  
San Jose, California.

"Dear Mr. Blanchfield:

"You will find herewith a copy of our letter ad-  
dressed to Mr. J. F. Cambiano relative to efforts  
made by the Bay District Council of Carpenters

(Testimony of Joseph F. Cambiano.)

to prejudice the general contractors in the bay area against our millwork.

"Since writing this letter to Mr. Cambiano another case has come up with the office of the construction quartermaster at Fort Mason, San Francisco. Major Jones in that office informed our San Francisco sales manager that he had been notified that he might have trouble if they awarded us any millwork. He also told us that it would be necessary for the Pacific Manufacturing Company to give him some evidence that our work was fair and could not be discriminated against. [830]

"We think a letter to that effect to the Construction Quartermaster's office from your general offices would clear up this misunderstanding.

"We trust that your office will make every effort to get this situation cleared up.

"Yours very truly,

PACIFIC MANUFACTURING  
COMPANY,

By J. L. PIERCE,

President.'"

I have never seen Exhibit 39-9 before. I don't recall it. Exhibit 2-1 has nothing to do with Fort Mason or anything. I believe it is a copy of the letters and instructions the General President mailed to Secretary Blanchfield of the Santa Clara District Council of Carpenters. That is the first time I have seen that one.

It was stipulated that Exhibit 39-9 was a carbon

(Testimony of Joseph F. Cambiano.)

copy of a letter sent by the General Office, and it was introduced in evidence and read as follows:

“September 20, 1938.

“Mr. M. L. Blanchfield, Secretary,  
Santa Clara Valley District Council,  
72-78 North Second Street,  
San Jose, California.

“Dear Sir and Brother:

“This will acknowledge receipt of your communication of September 13th as well as your communication of September 14th, together with communication you received from the Pacific Manufacturing Company, dated September 13th, and in reply thereto desire to first call your attention to a communication addressed to you under date of July 7th, 1938 by the First Vice President, which I quote:

‘Mr. M. L. Blanchfield, Secy.,  
Santa Clara Valley D. C.,  
72 N. Second St.,  
San Jose, Calif.

‘Dear Sir and Brother:—

‘According to our records the agreement between your [831] District Council and the various mill owners in your district expired June 15, 1938, therefore, I am writing you at this time to request that you forward me by return mail copy of your new agreement effective on and after June 15th, and at the same time would also request that you

(Testimony of Joseph F. Cambiano.)

advise me the names of the various concerns that have signed this agreement.

"Awaiting your reply, I remain,

Yours fraternally,

MAH

(S) M. A. HUTCHESON,

S

First General Vice President."

"Up to this time our records do not show that we received from you any reply to that communication.

"As I understand your agreement that expired on June 15, 1938 read as follows:

"Paragraph 21'

"This agreement is to remain in effect for a period of not less than one (1) year from June 15th, 1937 or until June 15th, 1938, and shall continue to remain in full force and effect thereafter, except that it shall be subject to change, modification or termination by either party upon sixty (60) days notice being served in writing upon the other party.'

"My understanding is that when the Bay Counties District Council was considering and arranging for negotiations with the Mill Operators of the Bay area on a new agreement there were representatives of your Council, or the Mill Local in your Council, sat in on various occasions with the committee of the millmen.

"I understand, full well, that the Pacific Manufacturing Company being located in Santa Clara

(Testimony of Joseph F. Cambiano.)

is not in what is usually referred to as the metropolitan area in and around the Bay District, but in the past the agreement has been the same as that in the Bay area.

"My further understanding is that the matter of the scale [832] of the millmen in the San Francisco area was referred to an arbiter by consent of the Mill Operators in the San Francisco area and Bay Counties District Council, and that the decision of the arbiter was, giving the millmen an increase of \$1.00 per day, raising their wage scale to \$9.00 per day.

"I am quite sure that you and the members of your Council understand that it is the policy of the Brotherhood that we assist members of our organization in every way we possibly can, and when it comes to determining their wage scale that is a matter of local autonomy.

"The members of the Brotherhood in the Bay area took what they thought was the proper procedure in negotiating for the establishment of their wage scale, and through negotiation got a \$9.00 wage scale established for the mill employees, and, as I understand, the Mill Operators on the San Francisco side of the Bay Counties are paying the \$9.00 scale.

"It is the duty of the undersigned, and other General Officers, to protect the members of our organization in every way we possibly can, and in view of that fact, and due to clause 21 in your

(Testimony of Joseph E. Cambiano.)

agreement, heretofore quoted, it is my desire that you, representing your Council, notify the Mill Operators that in conformity with Section 21 you are desirous of receiving within sixty days a wage scale equal to that of the San Francisco area that has been given to our millmen by the arbiter; namely, \$9.00 per day, or if they will not pay that and the members of your district wish to continue to work at the \$8.00 wage scale it will be necessary, if they desire to continue the use of the label of our Brotherhood, that they agree they will not ship their material into a locality where the wage scale is higher than that paid by the Santa Clara mill operators. In other words if they wish to continue to ship material into the San Francisco district, and use the label of the Brotherhood, [833] it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into that locality or any other locality paying a higher wage scale than that now being paid in your district.

"In reference to your communication wherein you ask that Brother Cambiano be assigned to the Santa Clara and Bay Counties district until such time as the entire mill situation can be straightened out, will say that we have no objections to rendering every possible assistance, and we are sending a copy of this communication to repre-

(Testimony of Joseph F. Cambiano.)

sentative Cambiano with instructions that same is to be used for his guidance in rendering what assistance he can.

"I trust that you will not delay in notifying the Pacific Manufacturing Company of the contents of this communication so that the matter can be adjusted at once."

"Fraternally yours,"

W. L. HUTCHESON

"General President."

Paragraph on the second page, in blue pencil, Defendants' Exhibit 2-1, a letter from J. F. Cambiano to W. L. Hutcheson, reading:

"Thursday a meeting was called by the Cabinet Manufacturers here in Los Angeles for the purpose of closing the agreement but I find myself in a rather peculiar position—for all these years I have been selling the labels of our Brotherhood, but according to your ruling, dealing with the Pacific Manufacturing Co., so far as the Weber Company is concerned this will let them out. However, I have not informed him of your decision until after we meet in San Francisco. In the meantime I am stalling with the closing of this Millmen's agreement," refers to the ruling the General President made on the Pacific [834] Manufacturing Company.

As I understand it the ruling that he made only applied to the Six Counties setup and did not

(Testimony of Joseph F. Cambiano.)

apply to Los Angeles, for the simple reason that at the time the Weber Company was signed he did not have a label; we were working under what was called a posted agreement, the label did not come into the Weber Company until January 20, 1941. That is in October.

"Q. What were you in a peculiar situation about, then?

"A. Well, the Weber Company unionized its men but he did not want the label. If this material came in here it would not be installed, because it did not have the label.

"Q. When did you unionize the Weber Company? Didn't you testify in 1940 or 1941?

"A. The Weber Company was not completely organized and the men were not all tied up in the union until the time he made application for the label.

"Q. That was in 1941, was it not? Didn't you testify to that?

"A. So that there won't be any misunderstanding, I have the original letter that I sent to the Secretary of the District Council in Los Angeles, 'Please be advised the first agreement with the Weber Showcase & Fixture Company was effective as of October 11, 1940. The Weber Showcase & Fixture Company was furnished the label stamp No. 37 on January 20, 1941. The second agreement was signed with the Weber Showcase & Fixture Company on August 1, 1941.'

(Testimony of Joseph F. Cambiano.)

"Q. This letter here, Mr. Cambiano, is dated October 1, what was the rather peculiar position you were in at that time because of the ruling of the General President as to the Pacific Manufacturing Company, so far as the Weber Company was concerned?

"A. We would not be putting up the material unless it had the label.

"Q. What had that to do with the ruling on the Pacific?

"A. The Pacific had to do with the six county rate in this area. [835]

"Q. I say, what had the Pacific ruling to do with the Weber Company? You say this ruling only applied to the six counties. Weber is in Los Angeles, is he not? A. Yes.

"Q. What has the Pacific ruling got to do with Weber that put you in this bad position that you say you are in?

"A. I do not recall it.

"Q. Isn't it fact, Mr. Cambiano, that the ruling of the General President was that the Pacific Manufacturing Company could not ship out of Santa Clara County unless they raise the wage scale? Isn't that true?

"Mr. Rutzohn: I object to that, the letter states otherwise that has been introduced in evidence.

"Mr. Clark: That letter there does not.

"Mr. Rutzohn: It shows just the contrary.

(Testimony of Joseph F. Cambiano.)

You are trying to put a construction on this language——

“The Court: It is cross-examination.

“A. As far as the Pacific Manufacturing Company is concerned, Mr. Hutcheson told Mr. Pierce just what was in the letter.

“Mr. Clark: Q. That is in the letter that I read to you a moment ago, Exhibit 39-9, you just read. Will you read that part, please, to the jury?

“A. ‘In other words, if they wish to continue to ship material into the San Francisco District and use the label of the Brotherhood it will be necessary that they pay a wage scale equal to that paid in the San Francisco area, and if they do not wish to pay that and want to continue to use the label they will have to agree not to ship material into the locality or any other locality paying a higher wage scale than that now being paid in that district.’ I don’t recall what that had to do with Weber Manufacturing Company. The scale in Los Angeles at that time was lower. The question was never raised under this ruling whether he would not be able to ship here even if he was organized. [836]

I organized the Weber Company. The 1938 contract took effect on November 1, 1938.

Exhibit No. 42-21 is a report from me to Mr. William Hutcheson and was introduced in evidence, and read as follows:

“This is on the stationery of the United Brother-

(Testimony of Joseph F. Cambiano.)

hood of Carpenters and Joiners of America, 17 Aragon Boulevard, San Mateo, California, November 12, 1938. It reads as follows:

Dear Sir and Brother:

Upon arriving in San Francisco Monday Nov. 7th I contacted the Management of the following concerns in the six counties: Mr. Ennes, Secy. of the Cabinet Mfrs. of San Francisco, Mr. Pearson of the Redwood Mfg. Co. of Pittsburg, Mr. McKeon of San Mateo County, Mr. Pierce of the Pacific Mfg. Co., Santa Clara, Mr. Edwards of the Oakland Planing Mill Owners, Mr. Minton of the Minton Lumber Co., Mountain View. All of these were contacted in person for the purpose of having them present in a conference in clearing up our recent negotiation dealing with wages, hours and working conditions. Am pleased to report that Wednesday evening when the meeting was called they were all present. While there were some misunderstandings to be cleared up, after a lengthy session the meeting adjourned with but one problem uncompleted; that [837] had to do with the Oakland Agreement. Same was taken care of the following day.

"I also held a meeting with members of our organization comprising the six counties in regard to future policy in dealing with the mill situation. I also attended the meeting of the Millmen's Union in San Jose. Considerable time was spent in Oak-

(Testimony of Joseph F. Cambiano.)

land as there has been a disagreement between the two secretaries on both sides of the Bay. However, this has now been cleared up and I am satisfied, so far as the mill situation is concerned, it is in very good shape. Copy of the agreements covering these counties will be mailed to you by Secy. Ryan of the District Council of the Bay Districts, and Secy. Blanchfield of the Santa Clara Valley District Council; and I will mail you a copy of the Redwood Mfg. Co.'s agreement covering Contra Costa County. This completes my assignment so far as the mills are concerned.

"There still remains the question of three manufacturing companies, makers of ironing boards and medicine cabinets, which are meeting stiff competition from the South and are deserving of some consideration. Board Member Muir has taken this matter up when he was in Oakland and I prefer not to do anything with this until after hearing what arrangements he had agreed upon with Mr. Edwards, Secy. of the Association. It may be necessary within the next few weeks to call another conference in this regard.' "

I don't recall offhand what the disagreement was between the two secretaries on both sides of the Bay, there is so much disagreement over there between Nat Edwards and Ryan. We never could agree on anything with Mr. Edwards over there; He would say something today and tomorrow he would change it. Mr. Ryan is the secretary. The dis-

(Testimony of Joseph F. Cambiano.)

agreement was everything in general. You never could get Nat Edwards to agree on anything [838] and stay put; they were fighting all the time. I think that is the disagreement referred to in the letter just read.

The language in Exhibit 2-K, "The San Francisco Planing Mill Owners and Cabinet Fixtures are taking the position that this paragraph must be lived up to or wages brought down to meet those of a lower bracket", refers to paragraph 2 of the agreement.

I didn't have anything more to do with the 1938 contract after November 26. I was all through when the contract was—except finishing up the work; the mills that had old work on hand, the Redwood Manufacturing Company, they put theirs into effect immediately; the P. M. Company, I think, took a little less than forty days. I had absolutely nothing to do with the San Francisco contract after that date, because they set up their own program to dispose of the old work. I had dealings on the 1939 contract only to the extent of calling in the two firms outside of the Bay Counties District, Pacific Manufacturing Company and Redwood Manufacturing Company.

Thereupon letter was marked "U. S. Exhibit No. 184", and the following read in evidence:

"Mr. William L. Hutcheson, General President, Carpenters Building, Indianapolis, Ind. Dear Sir and Brother:

(Testimony of Joseph F. Cambiano.)

"My report for the week ending June 3rd, as per Secretary Ryan's request I went to San Francisco to attend a meeting of the Mill Owners Saturday afternoon. Upon arriving, we discovered the Mill owners, at least a large proportion of them, had left town to take advantage of the Saturday to Tuesday holiday. There was no meeting. Same has been set for this coming Monday. I believe we will be able to arrive at an agreement. We may have some difficulty with Mr. Edwards of Oakland, as he wants to add a number of doors to the exempted list."

In the 1939 one, whenever there was a meeting to [839] negotiate an agreement, which every local union could make a request for, it would be up to me to notify Redwood Manufacturing Company, of whatever date it would be set for with the Bay Counties. In other words, Mr. Ryan sent out a call for his local unions, 42 and 550, and because the Bay Counties could not call in Pittsburg or Santa Clara on account of it was out of his district. All I had to do was notify the two outside firms there was going to be a meeting here at a set date and I sat in the meetings. In fact, I was made chairman of the meetings, just because I was there, but I had no voice in the matter because the entire negotiations would be between the employers and employees.

Mr. Pierce and Mr. Pearson took the position whenever there was a meeting the International

(Testimony of Joseph F. Cambiano.)

would call to their attention they would be willing to come and attend. They did not feel they would be required to come if notice was sent to them by Mr. Ryan.


Mr. Hutcheson told me to go to the meetings I attended. I went there to assist our local unions in any way possible. I attended, pursuant to that order, practically all of the meetings; I missed several of them.

#### Cross-Examination

By Mr. Faulkner:

I did not participate in the negotiation of either the 1936 or the 1938 contract. My first connection with this matter in controversy was after the 1938 contract had been entered into between the San Francisco group and the two Millmen's Unions.

The situation presented by the difference in wage scales of \$9.00 in San Francisco and \$8.00 in Oakland was the result of the Arbitration Award. The matter was settled by an [840] arrangement being made whereby the employers of the millmen in the six counties in this area were to agree upon a uniform wage. That compromise was worked out between the Cabinet Manufacturers and the Local Union Organization. I participated in that. My position and aims related primarily to the employees. It happened I had been familiar with the Pacific Manufacturing Company situation for sometime. I also knew of the situation with respect



(Testimony of Joseph F. Cambiano.)

to Redwood Manufacturing Company. I remember in the contract worked out in settlement of this differential in wage scale, there was a provision contained known as paragraph 2 that General Hutcheson, or someone, said would have to go out of the agreement.

I am familiar with the paragraph that appears under the head of "Maintenance of fair labor conditions". If I am not mistaken it was Mr. Hart who suggested it remain in. At the time Mr. Hutcheson objected or directed that it go out. I wouldn't say for sure if Mr. Ennes also suggested it remain in, but I know it came from the employers' side, some San Francisco employer. I wouldn't say for sure Mr. Ennes was not the one who made the suggestion it remain in, but I know the Planing Mill group was very much concerned about it.

The basis of the compromise was a uniform wage scale for employers of Millmen's Unions 550 and 42 and similar unions in the six counties, with the exception of one part of the operations in the Redwood Manufacturing Company, where the employer had to agree it was somewhat of a different operation, there was a slight differential there. Redwood Manufacturing Company was not present at that meeting and its subsequent contract was not discussed at that meeting.

Meetings when the men from the international office were here and said the paragraph should go out was around the first part of October, 1938. [841]

(Testimony of Joseph F. Cambiano.)

Exhibit 2-Q was a report I made to Mr. Hutcheson concerning the so-called compromise dated October 24, 1938.

Thereupon the letter was introduced as "Defendants' Exhibit 2-Q," and was read as follows:

"Dear Sir and Brother:

"Reporting on the mill situation covering the six counties in the Bay District, as I have previously reported, Local Union #550 of Oakland by vote of 246 to 10 voted to accept a six-county program of \$8.50 per day. Local Union #42 of San Francisco had a special called meeting last Monday and after a stormy session accepted my report and recommendation by voting 212 to 40 in accepting the program; this making a total of 258 for and 50 against. The men were ordered to return to work to the number of 300.

"I have been dealing with the Pacific Manufacturing Co. of Santa Clara and have presented an agreement which will be presented to Millmen's Union #262 at San Jose at a special called meeting this Monday night. This agreement embodies practically all of the Bay Counties' working conditions. San Jose Millmen's will accept this agreement I am sure. I have been arranging with the committee thru the District Council in working out the incompleting work.

"I have also spent considerable time with a committee of Millmen's Union #1956 of Pittsburg and the Management of the Redwood Mfg. Co. We have

(Testimony of Joseph F. Cambiano.)

come to an agreement and same will be submitted to the Millmen's Union for their approval this coming Thursday evening. This will pretty well clean up this situation with the exception that I am to call a conference of representatives from the six counties to determine the length of the agreement. It is the opinion among most of the employers and some of our local unions that it should run for a period of two years. [842]

"Last week I held a conference with the General Manager of the I. Magnin & Co., one of the largest department stores in San Francisco. This firm is building a \$2,000,000 building in Los Angeles. The millwork on this job amounts to \$300,000. A firm from San Francisco was to do the work, but due to the pressure brought upon I. Magnin & Co. thru its customers in Los Angeles, it became necessary for them to award at least 80% of this work to the Los Angeles mills. The Management, knowing that the Weber Fixture Co. has been unfair to us, has endeavored to work out some plan in order to avoid *embarassment* for themselves in Southern California. I have taken this matter up with our District Council in Los Angeles with instructions how to proceed.

"In addition to attending these meetings I have attended the meetings of Local #42 of San Francisco, #550 of Oakland, #62 San Mateo, and the District Council.

"I will be spending most of my time in San Jose

(Testimony of Joseph F. Cambiano.)

and Pittsburg this coming week, and am also checking all of the mills in the six counties. I do not anticipate any trouble whatsoever.

"Enclosed please find receipt for last week and bill for this week.

Fraternally yours,

J. F. CAMBIANO."

After we reframed our contract in 1938, pursuant to the discussion of some international officer, that paragraph concerning "Maintenance of fair labor conditions" was out. After the paragraph concerning working conditions had been left out, a contract was entered into with Redwood Manufacturing Company which is in evidence and marked 123-8.

There is a differential in the wage scale in that contract. I don't think there was a sliding scale in Pacific [843] Manufacturing Company, excepting on stock sash and doors, which was identical to the one here in San Francisco. There were not differentials in the wage scale there. The controversy we had with the P. M. Company was over the special sash and doors against the stock sash and doors; they were using the same operation and the same scale, which was the lower scale, to be applied on a higher rate.

After the 1938 agreement we entered into another contract with the P. M. Company at about the same time as the one in the Bay District. The

(Testimony of Joseph F. Cambiano.)  
negotiations were practically at the same time. I think the Redwood was a little later.

I testified that the intent of the paragraph in the 1938 contract concerning the memorandum on the maintenance of the fair labor conditions was to provide for the protection of the local people bound by the contract then in existence against a lower scale in the six counties. Notwithstanding that Mr. Hutcheson ordered it out. Mr. Ennes or Mr. Hart, one of the two, ordered it to remain in. The reduction of the half a dollar a day was on account of bringing in the six counties.

#### Cross-Examination

By Mr. Tuttle:

With reference to Mr. Hutcheson's letter dated September 20, 1938, to Mr. Blanchfield, secretary of Santa Clara Valley District Council, where Pacific Manufacturing Company is located, according to the policy of the Brotherhood the matter of a wage scale is a matter of local autonomy. That is the reason you notice in the minutes it all went to a vote of the Local Union. Every Local Union votes the acceptance or rejection of all the agreements. By local autonomy is meant "a matter of the jurisdiction and sovereignty of the particular local." That has in charge the wage scale. [844]

We have always considered Santa Clara County is what is commonly known as the Bay Area. Because of that geographical fact Santa Clara subsequently came into the six-county agreement at the

(Testimony of Joseph F. Canibiano.)

end of 1938, and took part in the 1939 contract. Prior to the 1921 crash here Pacific Manufacturing Company and the Bay District always worked under union conditions.

In 1921 was the American Plan fight. The reference in the letter "in the past the agreement has been the same as that in the Bay Area", refers to the time mentioned. At the time the letter was written, September 20, 1938, was the time when Mr. Edwards, representing the employers in Oakland, had refused to go along with the Arbitration Award of \$9.00. He got away with four-bits worth.

On September 20, 1938, we had this situation: In Oakland County Mr. Edwards refused to pay more than \$8.00. San Francisco County had \$9.00 and Santa Clara County had an agreement which could be terminated on sixty days' notice, under which only \$8.00 would be paid. That conflict of rates within the Bay Area confronted the situation with the trouble I was dealing with in that letter. The ultimate result by which that trouble was dispersed was: the Bay Area was brought together as an economic unit on a common wage scale, the union men in San Francisco giving up fifty cents and the local men in Oakland getting fifty cents.

We notified Pacific Manufacturing Company to terminate the agreement in sixty days pursuant to Mr. Hutcheson's suggestion in that letter. At the end of sixty days Pacific Manufacturing Company came up, according to the rules of the Union, for a new agreement.

(Testimony of Joseph F. Cambiano.)

I was tipped off when I got here that the Union and the employers had gotten together and they offered me the [845] \$8.50. The situation in regarding the bringing about uniformity was that Santa Clara would come in on the \$8.50 rate, and it was agreed to.

"Q. And the suggestion of Mr. Hutcheson here in this letter was passed on to the Pacific Manufacturing Company that under that section, the sixty-day clause, when that terminated, they wanted a new agreement and the use of the label in connection with the new agreement and they should pay the same rate of wage as the other counties in this economic unit?

"A. That is when it took place."

The result was, for at least a short period of time, harmony on the \$8.50 rate in all these counties.

I recall Mr. Ryan telling me of having mailed the letter out referred to in Exhibit 41-4 "I pointed out to the employers that copies of this letter carrying this information were sent to Home Builders, Contractors, Architects and others, broadly advertising the fact that that kind of millwork could be brought in and would be installed." Wide publicity to the building world was given that direction of General Hutcheson as to the honoring of the label throughout all the counties. I know that the instruction was given referred to in paragraph 2 of that letter as follows: "Furthermore, that the general office, in my presence in a meeting in their

(Testimony of Joseph F. Cambiano.)

office stated that woodwork bearing the label would have to be installed regardless of the scale paid in its manufacture". I issued them out myself time and time again.

The instruction from the General Office was, we were to make as nearly uniform agreement as possible, taking into consideration, perhaps, some differential that is in certain operations, but the intent was to, so far as the issue was concerned, it had to be uniform. Uniformity of the wages came up every time we sat in here. If they brought up the [846] Pacific Manufacturing Company on the outside, they would say, "Well, bring in the Pacific Manufacturing Company," and after that they brought in the Pittsburg Company in Contra Costa County.

I remember the instance bringing about the letter from Mr. W. L. Hutcheson to Mr. Ryan, that millwork manufactured in Tacoma, bearing the union label, must be recognized and installed in San Francisco. Tacoma is in the State of Washington.

Pacific Manufacturing Company did not ever lose its label.

#### Cross-Examination

By Mr. Faulkner:

"Mr. Faulkner: These agreements that counsel for the Government have here are not of value because they are before this 1938 arrangement. There is one item here that we referred to that we might read into the record, in the interest of clarity, without having to read the whole contract.

(Testimony of Joseph F. Cambiano.)

"Mr. Cambiano testified that the reason that the Pacific Manufacturing Company—this is my recollection of his testimony—did not participate in the negotiations leading up to the 1938 contract in its initial stage, is that they had not been served with notice. Paragraph 21 of the 1937 contract provides:

"This agreement is to remain in effect for a period of not less than one year from June 15, 1937 until June 15, 1938, and shall continue to remain in full force and effect thereafter except that it shall be subject to change and modification or termination by either party on 60 days' notice being served in writing on the other party."

"Q. That is the paragraph, Mr. Cambiano, that you referred to? [847]

"A. Yes.

"Q. I think I misunderstood an answer of Mr. Cambiano with respect to the Pacific Manufacturing contract. Did I understand, is this correct, that the Pacific Manufacturing contract here actually entered into in 1938 was similar as to wages of the journeymen millmen but there was a difference in the sash and door men?

"A. That was the dispute between the sash and door men."

That controversy was over the detail of stock, sash and doors. It appeared after the agreement was entered into that they were using the same rates

(Testimony of Joseph F. Cambiano.)

for stock sash and doors and special or detail sash and doors. That was the disturbance we had in there.

The apprentices are paid at a higher rate than they do here in San Francisco, always bid, and our boys insisted it was agreed amongst the employers they would not disturb the apprentice setup.

During the time of these disputes between the unions in 1938, and Pacific Manufacturing Company, that company did about 80 percent. of the work in this district.

**Cross-Examination**

(Resumed)

By Mr. Tuttle:

Refreshing my memory, I know now there was also in paragraph 17 this clause, "Nothing herein is to be interpreted as to any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-trust laws." I knew it at the time I received that contract.

**Further Cross-Examination**

By Mr. Clark: [848]

I would not say for sure whether that same paragraph 17 is in every contract in this district with the exception of Pacific Manufacturing Company. I know that the exemption is out of Pacific Manufacturing Company. Pacific came up to \$8.50.

(Testimony of Joseph F. Cambiano.)

Further Cross-Examination

By Mr. Tuttle:

Paragraph 17 in 1939 is out; it is in in 1938.

Redirect Examination

By Mr. Routzohn:

Pacific Manufacturing Company came up to \$8.50 and the San Francisco mills came down from \$9.00 to \$8.50. The Local Unions came down to \$8.50 for the benefit of the millmen in the six counties. The Locals agreed to take \$8.50 rather than \$9.00 awarded to them in 1938, and are still receiving it. At the time they took the cut they were receiving \$9.00, not only in San Francisco, but in San Mateo as well.

"Q. There is a dispute on now, is there not, in 1941, over the wage scale?

"Mr. Clark: We object to that as immaterial, and as calling for the conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Routzohn: Q. Is there an arbitration going on at the present time over the wage scale between the employers and the employees?

"Mr. Clark: We object to that as being immaterial to any issue in the case.

"The Court: Sustained."

"Mr. Routzohn: That is all." [849]

Thereupon, the following was read in evidence:

" \* \* \* from the General Constitution of the

United Brotherhood. It is part of what is called the obligation which each member takes when he is initiated into the organization of the United Brotherhood as a member in good standing. I won't read the whole of the obligation, but I would like to read this portion of it:

"I....., of my own free will and accord in the presence of these members here assembled do solemnly and sincerely promise on my sacred honor that I will never reveal by word or deed any of the business of this United Brotherhood unless legally authorized to do so. I promise to abide by the Constitution and Laws and the will of the majority, observe the local trade rules of this order, and that I will use every honorable means to procure employment for brother members. I agree that I will ask for the Union Label and purchase union-made goods and employ only union labor when same can be had."

"Then I will skip some portions that are not relevant here, and proceed as follows:

"And I further affirm and declare that I am not now affiliated with and never will join or give aid, comfort or support to any revolutionary organization or to any organization that tries to disrupt or cause dissension in any local union, district council, State or Provincial Council of the International body of the United Brotherhood of Carpenters and Joiners of America.'"

Thereupon, defendants rested.

Thereupon, the following evidence was introduced in behalf of plaintiff, over the objection of defendants that it was not proper rebuttal:

“Mr. Howland: In Exhibit No. 111, the minutes of the Bay Counties District Council of Carpenters for April 13, 1938, [850] the following appears under the heading Communications:

“‘From Local Union 42 asking that a provision be incorporated in our agreement with the employers stipulating that nothing but union-made mill and cabinet work would be handled. Referred to Unfinished Business.’

“Mr. Routzohn: Will you stipulate that was referring to the same proposal?

“Mr. Howland: As I construe that minute, Mr. Routzohn, that records the receipt of a letter by the District Council from Local 42, asking that a provision be incorporated, and so on.

“Mr. Routzohn: All right.

“Mr. Howland: From the minutes of the same Council for July 20, 1938, a short excerpt.

“Mr. Routzohn: The same objection, if Your Honor please, because it merely shows an agreement on the part of 42 and 550 to endorse an agreement, and that agreement is in evidence.

“The Court: Overruled. You may read it.

“Mr. Howland: In Exhibit 111, minutes of the Bay Counties District Council of Carpenters, July 20, 1938, under the heading New Business, the following appears:

“‘The new agreement between the cabinet man-

manufacturers and planing mill owners and Local Unions 42 and 550 and the District Council was read and explained, and it was moved and carried that the Council endorse the agreement.' "

\* \* \* \* \*

"Mr. Howland: The minutes of the District Council for March 1, 1939, contains the document entitled 'Proposed Changes to the By-Laws of the Bay Counties District Council of Carpenters' approved as a Whole by the District Council, Wednesday Evening, December 21, 1938,' and in the paragraph entitled 'Millmen,' change No. 22, the following appears:

"Page 35, section 1. Substitute District Council for Building Trades Council in the first and second lines and add [851] 'In conformity with the agreement between the mill owners and millmen, the District Council will refuse, etc.'

"It shall read: 'Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or paying less than the wage scale hereinbefore quoted, or employing other than union mechanics.' "

\* \* \* \* \*

"Mr. Howland: These are the minutes (Exhibit

124-37) of the joint conference committee dated January 21, 1939, in which the following appears:

"Meeting with mill owners on last Wednesday, January 11, 1939. They refused to sign for any changes in present agreement, and it was then moved by Mr. Ennes and seconded by Mr. Hart that labor immediately initiate proceedings for a change and modification of the present agreement, and motion carried."

"And with reference to the motion by Mr. Ennes, the following pencil notation appears."

\* \* \*  
"Mr. Howland: This pencil notation reads:

"It was then moved by Mr. Ennes—reads as follows:

"Move by Ennes that such acts as are necessary to be taken on part of labor as will start the negotiations in six counties."

"And down below it says:

"Bills to come. Minutes approved as corrected."

"That is the pencil matter that I have just read. There is a pencil line leading around the top of the page to the word 'Mr. Ennes.'"

\* \* \*  
"Mr. Howland: From the joint conference committee minutes of December 3, 1938, the following appears:

"Brother Ryan told of calling a meeting of the joint [852] conference committee. San Mateo was

represented by Mr. McKeon, San Francisco by Mr. Ennes, Gaetjen and Warden, Mr. D. N. Edwards of Alameda County. If the scope was six counties they would be bound to arbitrate, and if not six counties, the arbitration clause would not be binding.

“Ennes insists paragraph No. 2 go in.

“Ryan reported Brother Cambiano phoned some orders from General President Hutcheson to the effect that the San Francisco agreement must not contain quotations from the arbitration board and paragraph No. 2 must be eliminated.”

“Brother Cambiano hinted the General President did not favor arbitration.

“Brother Ryan stated he would write General President Hutcheson for information before drawing up agreement for the Bay Counties District Council.

“Moved by Brother Sholden, seconded by Brother Westby that we request Brother Ryan to draw up a form of agreement that conforms to the San Francisco agreement including a clause stipulating arbitration and submit same to General Office for approval and if approved submit it to the employers in this district. Carried.”

“Mr. Burdell: These are from the minutes (Exhibit 18) of May 31, 1938:

“A lengthy discussion was had on the reply from the G. O. to our letter of May 21, 1938, regarding the Carpenters not demanding the stamp

on the jobs. The letter stated in part, 'inasmuch as Local 42 was affiliated with the D. C. of C., our local should request the Council to adopt a By-Law or Trade Rule that no work would be installed without the stamp.' It was suggested that we do just that. It was also stated 'that 550 and 42 were to get Union stamp clause inserted in new agreement.' "

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JOHN G. ENNES,

being previously sworn, testified in behalf of [853] defendants on Surrebuttal, as follows:

In all of the agreements, beginning in 1938, we had paragraph 2, which tied together with a uniform basis four counties. That eventually became expanded into a six-county arrangement, and I did persist in trying to have paragraph 2 in there. It was a binder to bring all of the area, the six counties or four counties, or whatever it happened to be, into a uniform rate. I had reason to believe, well founded, that although it was purported to be on a uniform basis, it was not on a uniform basis. I was insistent, not particularly paragraph 2, but something be put in in some form. I used paragraph 2, because it had, in my opinion, been adjudicated. It was passed on by a competent authority, and I thought that was the thing to do. I did not succeed, however. I still wanted paragraph 2 in there after the wage rate had apparently been agreed upon in the six counties, because there was one particular

(Testimony of John G. Ennes.)

instance in which, when they were going to set that \$8.50 agreement, a contract had been held up or purportedly so, and it was said it was on the \$8.50 basis, but after we got further into it we found out there was something else in it, that is, not uniform. It was substantially so but not uniform, and I was trying to protect myself in those clutches.

### Cross-Examination

By Mr. Howland:

Paragraph 2 went out when they went on that \$8.50 setup. Paragraph 2 went out about October 18, 1938. I think that is practically correct. The only way I can fix it was, at the time we introduced the \$8.50 a statement was made that they had approved the contract. It was my impression clause 2 was then definitely out.

About December 3, 1938, I was still of the opinion, and contended, paragraph 2 should be in to bring about a uniformity [854] in our relations. At this moment we are arguing the question, right now, in arbitration, because there are some difficulties which were supposed not to be there but they exist in fact.

Thereupon, it was stipulated the agreements are the best evidence of when paragraph 2 went out.

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Thereupon, it was stated that nothing further was to be offered by way of evidence and after the jury

retired from the court room, the following additional proceedings were had:

"The Court: Gentlemen, when the Government rested in the opening of its case motions were made to dismiss as to certain defendants, and thereafter I granted some of the motions. Since then I have heard and considered the evidence as to other of the defendants in the case, and I am now about to make some further dismissals.

"I therefore dismiss the case as to the following defendants upon the ground of the insufficiency of the evidence:

"The San Francisco Building and Construction Trades Council;

"The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 1956;

"M. D. Cicinato;

"Oscar H. Ostlund;

"Leo Roselyn;

"Otto W. Sammet;

"Charles F. Stauffacher."

\* \* \* \* \*

"At this time, at the conclusion of the taking of evidence in this case, defendants Mullen Manufacturing Company, Fink & Schindler Co., L. & E. Emanuel, Inc., Braas & Kuhn Company, Commercial Fixture and Store Front Institute, John Mullen—I will leave out the names of those you dismissed—Joseph L. Emanuel, J. G. Ennes, each for

himself, and not one for the other, moves to strike out the testimony and all exhibits covered and included in the motion to strike out made by each of these [855] defendants at the close of the Government's case.

"Said motion to strike out made at the close of the Government's case and now appearing in the record here on pages 954 to 961, inclusive, is made to the Court as though repeated word for word at length. The motion is made in this form upon the Court's indication that this is a satisfactory method of representing the motion to strike out.

"That is a full statement on that, your Honor. I know I have clearly identified the references.

"The Court: Yes.

"Mr. Faulkner: Motion for Directed Verdict. The foregoing defendants, each for himself, and not one for the other, at this time moves the Court for a directed verdict and to dismiss the indictment in the full and complete manner as the motion made at the conclusion of the case in chief of the Government, and as though said motions were repeated here at length. Said motion so referred to appears in the record now at page 961, line 15, to page 965, line 16, inclusive. The motion is made in this form without repetition in the light of the court's statement that it is a satisfactory form of presenting our motion.

"Now, I have listed the names particularly—your Honor has just made an order dismissing certain

defendants, and I think the Court understands that I am making that motion, both of the motions for every defendant that we represent that now remains in the case.

"The Court: Yes.

"Mr. Bacigalupi: May I have added to Mr. Faulkner's motions the names of my clients?

"The Court: Yes. Let it be understood that all motions for a directed verdict made by each defendant, each and every defendant be denied and an exception noted.

"Mr. Todd: If your Honor please, would your Honor [856] pardon me, but in view of the similar situation of the two labor councils might I inquire whether your Honor had in mind the Alameda County Building and Construction Trades Council? The evidence was similar to it, and the San Francisco Building Trades Council. I take the liberty of inquiring whether your Honor overlooked that.

"The Court: I will look at my notes further, Mr. Todd, and if I have overlooked something there I will call it to your attention.

"Mr. Howard: Do I understand, your Honor, the motion for a directed verdict of acquittal is being made?

"The Court: Yes, being made, and is denied. I understand those motions are part of the instructions that you have offered, the proposed instructions, of each of the defendants, the instructions which have been offered contain motions for directed verdicts.

“Mr. Howard: Well, we had not proffered those——

“The Court: You don’t save to. Let it be understood that each defendant makes a motion for a directed verdict, that the motion in each instance is denied, and an exception is noted on behalf of each defendant in the case. Is that sufficient?”

Thereupon, opening argument for plaintiff was made by Mr. Clark, during which the following proceedings occurred:

\* \* \* \* \*

“In the beginning of the case, when the indictment was returned there were eight labor unions in the case, and there were three employer associations and thirty-three millwork and patterned lumber concerns; there were thirty-nine individuals. Since that time some of them have dropped by the wayside by dismissal some of them have pled what we call *nolo contendere*, and some have been dismissed. Now, in the beginning, there were these three associations on the Employers’ side: The Lumber Products Associations, over here in San Francisco. You will remember some of the testimony brought in, a gentleman by the name of Gaetjen, [857] the Secretary of that. Then there was the Wood Products Association, over in Oakland, and that was Mr. Nat Edwards. You will remember that his name was featured in some of the testimony. A third employers’ association was that of which Mr. Ennes is the Secretary, and that is the Cabinet Institute.

"Now, the first two associations I have named have pled nolo contendere, and they are not to be considered by you in deciding their guilt. As his Honor has told you, a plea of nolo contendere in this case is tantamount to a plea of guilt.

"Mr. Routzohn: Your Honor please, we object to the statement just made by the counsel relative to nolo contendere being a plea of guilt, and even the reference to the fact that certain defendants have entered pleas of nolo contendere.

"The Court: Your objection is overruled.

"Mr. Routzohn: All right.

"The Court: The Supreme Court of the United States has said that a plea of nolo contendere is tantamount to a plea of guilt. Now, the word 'tantamount' is my own word, but that is what the Supreme Court has said. So there is nothing in your objection, Judge.

"Mr. Routzohn: Well, may we have the instruction at this time, your Honor please, that that is not to be considered in any way affecting—

"The Court: No, no, you may not.

"Mr. Routzohn: (Continuing) —the guilt or innocence of these defendants?

"The Court: You may not, and I shall instruct the jury to the same effect when it comes to final instructions.

"Mr. Routzohn: May we have an exception?"

Thereupon, the case was argued by Messrs. Tuttle, Todd, McKeivitt, Routzohn, Bacigalupi and Faulkner, in behalf of defendants. [858]

Thereupon, in the absence of the jury, the following proceedings were had with reference to the instructions:

"Mr. Faulkner: Judge, this question arose among the lawyers. As you know, some of them come from Ohio, some come from New York. They wondered, on the matter of excepting to instructions, whether it was you Honor's desire that all exceptions be made in the presence of the jury, or whether the exceptions to the charge can be made immediately upon their retirement.

"The Court: A number of instructions have been offered. I do not know how many; quite a large number. It occurred to me that objections might be made by the attorneys by referring to the instructions by number. That is to say, if you made an offer of eighty instructions, and if you think I have not covered all the instructions that you had offered, I would think that you would have a right to say, 'We take exception to your Honor's refusal to give the eighty instructions that were offered.'

"Mr. Faulkner: What I had in mind was this, your Honor: Your Honor will recall a meeting of the District and Circuit Judges. Your Honor did not happen to be here at the time that I made some remarks to them. I discussed the matter with reference to the new rules about the fact that under our practice, in this particular District, which is dissimilar to some of these other districts, that we have to stand up before a jury and take the exceptions. Judge Welsh said, 'Well, I never made you do that.'

"I said, 'You never made me do it, but we have done that as the practice.'

"Judge Louderback said, 'I follow the practice.'

"Judge Fee and some of these other judges said, 'No, in our District we don't do that. We charge the jury, and immediately thereafter you take your exceptions.'

"And we had quite a discussion at that time, and that evidently is a practice followed in some of the other districts. [859]

"Now, then, whatever your Honor's preference is—

"The Court: Well, I am quite willing to adopt the procedure that you suggest, to have the exceptions made when the jury retires.

"Mr. Tuttle: Thank you very much.

"The Court: I am willing that you should take them in the most informal fashion, and I will, as far as I can, stipulate with you that you have done all that the law requires you to do.

"Mr. Faulkner: I knew that would be your Honor's position, because you have indicated in an earlier stage that feeling. The bar here generally feel that is an archaic rule. Is that agreeable with you, Mr. Clark?

"Mr. Clark: Yes.

"The Court: That will be the understanding gentlemen. The only reason, however, for the other procedure is that sometimes a judge overlooks an instruction, and when you say, 'Well, now, your

Honor failed to give Instruction 74—I have the instruction here, 74, I turn to 74, and I say, 'Well, that is true. I will give it.'

"Mr. Howard: Couldn't your Honor recess the jury?

"The Court: Bring them back again?

"Mr. Howard: I think that occurs so rarely. I remember one case, and that was a stock instruction of Judge Louderback. I called it to his attention, and he said it was clearly an oversight.

"The Court: I have frequently had attorneys call my attention to the fact that I had not given an instruction, and in a case like this, where so many offers have been made—now, I may feel that I have covered an instruction that you have asked me to give, and you feel that I have not, and if you call my attention to it, I say, 'Well, I see no objection to giving it; I will give it to the jury.'

"Now, unless you expect and intend to specifically call [860] attention to every instruction that you wish to object to, or take exception to; I can see no reason why you should not adopt the suggestion I made and except to the Court's failure to give the instructions that you offered.

"Mr. Tuttle: That is entirely agreeable to us, your Honor.

"The Court: I will see to it that all the instructions are filed with the Clerk, so that you will have a complete record, and that ought to be sufficient.

"Mr. Faulkner: That is agreeable."

"The Court: It will take but a short time.

"Mr. Tuttle: That is agreeable to all the defendants.

"Mr. Faulkner: In the matter of any instruction your Honor gives, I assume, as I told the lawyers today, the usual method of excepting to an instruction given but not proposed would be merely to identify it clearly enough so that your Honor knows it.

"The Court: Yes.

"Mr. Faulkner: If your Honor has already gotten the instructions—I know Judge Kerrigan sometimes used to give his charge to us in writing so there would be no problem.

"The Court: If you prefer to do it, I am perfectly willing to listen to your exceptions after the jury has retired. The only thing is, as I say, unless it was something that I considered extremely important, I certainly would not wish to call them back again.

"Mr. Tuttle: Your Honor, your suggestion, as you phrased it a little while ago, is entirely agreeable to us. Your Honor has had these requests before you, and we will, I am sure, not have occasion to call your attention to some particular one as if it had been overlooked. We are entirely content to take the exceptions as you propose, but we would like to do it, as there [861] are so many of us—I mean there are so many groups here—

"The Court: Yes.

"Mr. Tuttle: It might give a false impression to the jury if were all taking exceptions over an extended period. I know the jury would get im-

patient and wouldn't understand it. They would not know it was a legal matter merely.

"The Court: We will follow the procedure of listening to the legal exceptions after the jury has retired.

"Mr. Tuttle: There is one thing that counsel for the defense were a bit concerned about. Perhaps in the absence of the jury, as we are now, we might discuss it with you so as to get your viewpoint. The case is a little unusual in the fact that some defendants, other groups, have entered a nolo contendere. That fact has, of course, been mentioned. It was mentioned in the empaneling of the jury.

"The Court: Yes, I remember.

"Mr. Tuttle: It was mentioned in Mr. Clark's opening, in stating why certain defendants named in the indictment were not here. And it was mentioned in his closing. And it was mentioned in connection with an interruption of his closing. Our concern, therefore, now that that is in the case, is that the jury will thoroughly understand, either through some explicit instruction of your Honor or in any way your Honor thinks appropriate, that that fact is not to be deemed evidence or weighed against any of the defendants on trial.

"The Court: Yes.

"Mr. Tuttle: We should not be hung because some of the defendants, for some reason or other, think that, either to save money or something else, something perhaps in his history that he does not

want to have discussed when he takes the witness stand, decides to plead guilty to a misdemeanor. We have no responsibility for the advice that the lawyer gave him, if he gave him any [862] advice, or for the motive that actuated such a man. And it now being before this jury, that is the thing I am so much concerned about. They will say, 'Well, look at the number of people who pleaded guilty. There must be something rotten in Denmark.' I was just hoping, and I think it is the law—certainly it is fair play—that we should be protected against such an inference as that.

"The Court: I would wish to do that as far as was in my power.

"Mr. Tuttle: Thank you, your Honor, very much.

"Mr. Howard: There isn't any definite proposal on our part in that connection.

"Mr. Tuttle: I have made it verbally.

"The Court: I think I can cover that in my instructions. I will attempt to do so.

"Mr. Tuttle: Thank you, your Honor, very much."

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Thereupon, the closing argument in behalf of plaintiff was made by Mr. Clark. [863]

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### "CHARGE TO THE JURY"

"The Court (orally): Ladies and Gentlemen:

"I wish to add my congratulations to those of

counsel for respective parties for the faithful service you have rendered in the trial of this important case now coming to a close. Please accept my thanks, not only for the attention you have given to the testimony of witnesses and argument of counsel, but also for the uniform patience shown through a long and tedious trial.

"Trial by jury is an institution that has been established through long years of development of Anglo-Saxon jurisprudence. Under it, you are the triers of the facts, receiving and accepting the law, as given to you by me, and applying the facts thereto in considering your verdict. In the proper administration of justice it is absolutely essential that you be inspired by no motive other than the desire to reach the truth in the case. That, and that alone, is your task.

"No question of politics, church or religion; no question of affiliation or lack of affiliation with any group of citizens; no question of spite, fear, favor, prejudice or sympathy must be permitted to enter into your deliberations.

"The indictment charges a misdemeanor, and was returned by the Grand Jury on June 26, 1940. It charges that the defendants entered into a combination to restrain interstate commerce in millwork and patterned lumber, as defined in the indictment. In this connection, you are instructed that this definition includes not only millwork as that word is commonly understood, but also 'lumber which has been paneled, cut, or assembled into

standard or special patterns and forms . . . and such other wood products prepared for use in the construction of dwellings, buildings, fixtures, and store fronts.' The definition in the indictment of millwork and patterned lumber also include wood products 'used in the construction of prefabricated buildings.' [864]

"The indictment stems from a clause in our constitution which gives to the Federal Government the power to regulate commerce between the states, and obviously, interstate commerce is that which passes from one state to another.

"Congress determines the policy of legislation and with this policy neither courts nor juries have anything to do. Congress, acting within its province, enacted, over fifty years ago, a statute known as the Sherman Antitrust Law. The purpose of this statute is to protect the public interest by the maintenance of unrestricted competition in business and to promote unrestrained trade between the states. The benefits to be gained by unrestrained trade between the states were deemed by Congress to be greater than any benefits that would result from arbitrary control of commerce by anyone. In other words, Congress has determined that the public interest is best promoted and protected by the maintenance of competition.

"Section 1 of the Sherman Act provides that every contract, combination, or conspiracy in restraint of trade and commerce among the several states, or with foreign nations, shall be illegal.

"Count I of the indictment charges a violation of this section of the Sherman Act. Count II of the indictment has been dismissed, and you are not to concern yourselves with it.

"In Count I of the indictment the grand jury included among the defendants eight labor unions, as well as some of their officials. I shall refer to these defendants as the labor union defendants. Also included in the indictment were three employer associations and some of their members as well as officials, which I shall call the non-labor defendants. Two of these employer associations, that is, the Lumber Products Association of San Francisco and Wood Products, Inc. of Oakland, as well as those defendants who were members thereof, and their officers, [865] have pleaded nolo contendere. As I have heretofore explained to you, such a plea is an admission of guilt for the purposes of the case.

"In this connection, I think I should say to you that the fact that certain defendants have seen fit to enter a plea which will bring them before the court for judgment should not weigh with you against the defendants who have stood trial. It is not evidence against any of the defendants on trial, nor does it give rise to the slightest presumption against them.

"It is not necessary for you to concern yourselves about these defendants who have pleaded nolo contendere other than in the manner that I may hereafter describe.

"Since the commencement of the trial the case has been dismissed as to several of the defendants. You are to determine the guilt or innocence of the following named non-labor defendants:

"Commercial Fixture and Store Front Institute;

"Mullen Manufacturing Company;

"Braas & Kuhn;

"Fink & Schindler Co.;

"L. & E. Emanuel, Inc.;

"Mangrum, Holbrook & Elkus;

"J. E. Ennes;

"Joseph L. Emanuel;

"John Mullen.

"You will likewise consider in your deliberations the guilt or innocence of the following labor union defendants:

"The Alameda County Building and Construction Trades Council:

"The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America;

"The United Brotherhood of Carpenters and Joiners of America;

"The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; [866]

"The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550;

"J. F. Cambino;

"Charles Helbing;

"C. H. Irish;

“W. P. Kelly

“Walter O’Leary

“Emil H. Ovenberg;.

“Charles Roe;

“Dave Ryan;

“W. L. Wilcox.

“You will note that the above list of defendants includes a number of corporations. A corporation is an organization which derives its legal existence from a grant of a government, either State, or Federal, or foreign. It is composed of a group of individuals, partnerships, other corporations, or voluntary associations, which may be designated members, stockholders, subscribers, or by other names. For the purposes of legal liability and responsibility a corporation has an existence separate and apart from that of the person who are its components; it may sue in the courts, or be sued; and it may be guilty of violations of the Sherman Antitrust Act apart and separately from the guilt or innocence of its members, stockholders, or other components, and from that of its officers, directors, agents, and employees.

“You are to determine the guilt or innocence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

"If you find that there did exist a combination and [867] conspiracy such as is charged in the indictment, and that any defendant corporation participated therein, then I instruct you that such act of participation is deemed to be also the act of the individual director, ~~officer~~ or agent of such defendant corporation who authorized, ordered or did such act in whole or in part.

"Likewise, the list of defendants includes a number of labor union organizations and several members thereof. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately and apart from the guilt or innocence of their members.

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents.

"The indictment contains many paragraphs. I am not going to read it, but will endeavor to summarize it for you. Understand, you are concerned only with Count I, as Count II has been dismissed. The indictment is divided into eight parts. The first three deal with the general background of the millwork and patterned lumber industry. The fourth and fifth describe the defendants and their power to restrain and obstruct interstate commerce. The sixth contains count one; the seventh tells of

the effect of the alleged conspiracy, and the eighth relates to jurisdiction and venue. You will, of course, be permitted to take the indictment with you to the jury room.

"The indictment in substance charges that the labor union defendants and the non-labor defendants combined and conspired together to restrict, suppress and eliminate competition in the marketing of millwork and patterned lumber moving in interstate commerce, by excluding manufacturers of millwork and patterned lumber located in states other than California, from selling and [868] delivering such millwork and patterned lumber in the San Francisco Bay Area, and by preventing purchasers of millwork and patterned lumber located in the San Francisco Bay Area from purchasing millwork and patterned lumber manufactured in states other than California; all of which had or was intended to have the effect of controlling the market in millwork and patterned lumber moving in interstate commerce into the San Francisco Bay Area, and of raising, maintaining, and stabilizing the price of such millwork and patterned lumber and depriving purchasers or consumers located in the San Francisco Bay Area of the advantages which they would otherwise derive from free competition.

"The combination and conspiracy, as alleged in the indictment, therefore, had three objects, the first being to exclude manufacturers of millwork and patterned lumber located in states other than

California from selling and delivering such material into the San Francisco Bay Area, the second being to prevent purchasers of millwork and patterned lumber located in the Bay Area from purchasing such material from manufacturers located in states other than California, and the third being to raise, maintain and stabilize the price of millwork and patterned lumber in the Bay Area and thus deprive purchasers or consumers of the advantages derived from free competition.

"I shall hereafter instruct you as to what constitutes a combination and conspiracy in this type of case, but at this point, I will say that if, upon a consideration of the whole case, you find beyond a reasonable doubt that there was a combination and conspiracy among the defendants, and that the purpose of the parties to the same was to accomplish any one of these three objects, then the Government has sustained its burden under the indictment. It is not incumbent upon the Government to prove that all three of these stated objects were sought or attained. Proof of one is sufficient. [869]

"In order to establish the crime charged, it is necessary, first, that the combination and conspiracy to commit the offense charged in the indictment be established, and secondly, to prove further that one or more of the parties engaging in the conspiracy has committed some act to effect the object thereof.

"To constitute a combination and conspiracy it

is not necessary that two or more persons should meet together and enter into an express or formal agreement for the unlawful venture or scheme, or that they should directly, by words or in writing, state between themselves or otherwise what the unlawful plan or scheme is to be, or the details thereof, or the means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design: In other words, when an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the combination and conspiracy. The success or failure of the combination and conspiracy is immaterial, but before the defendants may be found guilty of the charge it must appear beyond a reasonable doubt that a combination and conspiracy was formed as alleged in the indictment, and that the defendants were parties thereto.

"In order to warrant you in finding a verdict of guilty against the defendants, or any of them, it is necessary that you be satisfied beyond a reasonable doubt that a combination and conspiracy as charged in the indictment was entered into between two or more of the defendants to violate the law of the United States in the manner described in the in-

dictment. It is necessary further that, in addition to the showing of the unlawful combination and conspiracy, the Government prove to your [870] satisfaction, beyond a reasonable doubt, that one or more of the acts described in the indictment was done by one or more of the defendants or at their direction or with their aid.

"Under the charge made the combination and conspiracy constitutes the offense and it must be made to appear from the evidence, beyond a reasonable doubt, before any defendant can be convicted, that such defendant was a party to the combination and conspiracy, and that he continued to be such up to the time that acts were committed in furtherance thereof, if the evidence shows that there were any such. The mere fact that any of the defendants named may have engaged in the performance of any of the acts charged in the indictment would not authorize a conviction by reason of that fact alone, but it is necessary to show that the defendants were parties to the combination and conspiracy before their guilt of the offense charged is made out.

"Each party must be actuated by a purpose to promote the common design. If persons pursue by their acts the same unlawful object, one performing one act, and a second another act, all with a view to the attainment of the object they are pursuing, the conclusion is warranted that they are engaged in a combination and conspiracy to effect that object. Cooperation in some form must be shown. There must be participation in the trans-

action with a view and purpose to further the common design. And if a person, understanding the unlawful character of a transaction, encourages, advises, or in any manner, with a purpose to forward the enterprise or scheme, assists in its prosecution; he becomes a conspirator. And so a new party, coming into a combination and conspiracy after its inception, with knowledge of its purpose and object, and with intent to promote the same, becomes a party to all of the acts done before his introduction into the unlawful combination, as well as to the acts done afterwards. Joint assent and joint participation in the combination and conspiracy may be [871] found, like any other fact, as an inference from facts proved.

“Where the existence of a combination and conspiracy has been shown, every act or declaration of each member of such conspiracy, done or made thereafter pursuant to the concerted plan, and in furtherance of the common object, is considered the act and declaration of all of the conspirators and is evidence against each of them. On the other hand, after a conspiracy has come to an end, either by the accomplishment of the common design, or by the parties abandoning the same, evidence of acts or declarations thereafter made by any of the conspirators can be considered only as against the person doing such acts or making such statements. The declaration or act of a conspirator not in execution of the common design is not evidence against any of the parties other than the one making such declaration.

The evidence in proof of a combination and conspiracy may be circumstantial. Where circumstantial evidence is relied upon to establish the combination and conspiracy or any other essential fact, it is not only necessary that all the circumstances concur to show the existence of the conspiracy or fact sought to be proved, but such circumstantial evidence must be inconsistent with any other rational conclusion. That is, you are to consider all of the circumstances and conditions shown in evidence, and if it appears to you as reasonable men and women that, even though there is no direct evidence of the actual participation in the alleged offense by the defendants or any of them, a reasonable inference from all of the facts and circumstances does to your minds, beyond a reasonable doubt, show that the defendants, or some of them, were parties to the combination and conspiracy as charged, then you should make the deduction and find accordingly.

"It is not necessary that it be shown that any person concerned in the alleged combination and conspiracy profited by [872] the things which he did, but if any of the defendants, with knowledge that the law was designed to be violated in the particular manner charged in the indictment, aided in any way by affirmative action in the accomplishment of the unlawful act, they would be guilty. To this statement there is one exception, and that is, if before any act has been committed on the part of any conspirator or at his suggestion or with his aid

or participation, any such conspirator withdraws from the conspiracy and wholly disassociates himself from the project or the carrying out thereof, he ceases to be a conspirator and is without guilt.

“By the finding of an indictment no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with, or responsibility for, the act charged against him. A defendant is presumed to be innocent at all stages of the proceeding until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt. And this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction. A reasonable doubt is such a doubt as you may have in your minds when, after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt. In order that the evidence submitted shall afford proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the most important and vital matters relating to your own affairs.

“Without it being restated or repeated, you are to understand that the requirement that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given to you.

“In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized, because of any feeling of sympathy or

other bias, to apply a strained [873] construction, one that is unreasonable, in order to justify a certain verdict when, were it not for such feeling or bias, you would reach a contrary conclusion. And, whenever, after a careful consideration of all of the evidence, your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced, the conclusion of innocence must be adopted.

"You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon this trial. Witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable men and women. You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to the Government or the defendants, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his

credibility. If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness' testimony.

"The individual defendants have offered themselves as witnesses and have testified in the case. They having done so, [874] you are to estimate and determine their credibility in the same way as you would consider the testimony of any witness. It is proper to consider all of the matters that have been suggested to you in that connection, including the interest that the defendants may have in the case, their hopes and their fears, and what they have to gain or lose as a result of your verdict. You are not limited in your consideration of the evidence to be bald expressions of the witnesses; you are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable persons.

"Statements of counsel during course of trial or in argument are not evidence in the case.

"If there is a variance between statements made by counsel as to what has been proven and what the record shows, to the extent that there is a variance you will disregard the statements of counsel and adhere to the record.

"Parties have a right to appear by counsel, and it is the privilege of counsel to address the jury on the facts. Counsel have a right to discuss the case

in all its aspects, and so long as they do not go outside of the case, they cannot be restrained by the Court. It is impossible to lay down any general rule as to what shall or shall not be said. Much latitude is always allowed in the argument of a cause before a jury.

“The true view of the position of counsel, before the jury, is that of assistants. They are officers of the Court, amenable to its authority, subject to its correction, and restrained by usages of honor and courtesy, which are as ancient in their origin and as potent for good, and as generally respected, as any usages which belong to any class of the highest grade of civilized man. The duties of the advocate are among the most elevated functions of humanity. He is the representative of his client's [875] cause, but these considerations insure an honorable advocacy. His business is to comment on the evidence, to sift, compare, and collate the facts, to draw his illustrations from the whole circle of the sciences, to reason with the accuracy and power of the trained logician, to enforce his cause with all the inspirations of genius, and adorn it with all the attributes of eloquence. It is the duty of the jury to listen, but no matter how charming the eloquence or how interesting the battle of wits between opposing counsel, you are to remember that you are not trying the attorneys in this case. You are the sworn judges of the cause, bound by the most solemn sanctions to do justice between the parties according to the evidence and the law.”

"If you find that weaker and less satisfactory evidence is offered and relied on in support of a fact, when it appears that stronger and more satisfactory evidence could have been produced by the party offering it, such weaker evidence should be viewed with distrust.

"You must bear in mind that the character of evidence which would warrant a verdict in a civil case is different from that necessary to warrant a conviction in a criminal case. In a civil case, mere preponderance of evidence would be sufficient to warrant a verdict, but a criminal case requires evidence of the guilt of a defendant beyond a reasonable doubt.

"The law presumes, unless evidence to the contrary is produced, that the character of the defendants for truth, honesty and integrity is good. The good character of a defendant is a fact tending to show the improbability of his having committed a crime and tends in a greater or less degree to establish his innocence. Such good character, when considered in connection with the other evidence in the case, may generate a reasonable doubt of his guilt.

"I have spoken of interstate commerce. As stated, it [876] consists of the shipment of commodities or materials from one state to another. In this case the question is whether the labor union defendants entered into a combination with the non-labor defendants whereby the defendants intended to or did bring about an undue restriction of or interference with interstate commerce in mill-

work or patterned lumber. It is the nature of the restraint and its effect on interstate commerce, and not the amount of the commerce which are the tests of violation.

“If a group of California lumber dealers should stop a truck coming from Oregon loaded with lumber because they did not want any Oregon lumber in California and prevent its entry, that is an unreasonable interference with interstate commerce, although it involves only one truckload of lumber.

“If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured in States outside the State of California; or if you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase and the labor union defendants agreed not to work on any patterned lumber or millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment. It would constitute no defense under the law, either

to the employer defendants or to the labor union defendants that the agreement or understanding may have been arrived at in settlement of a labor dispute; and it would likewise constitute no defense under the law that any such [877] agreement or understanding may have been arrived at as the result of proceedings in arbitration of such a dispute.

“If you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; or if you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured outside the State of California, such a combination and conspiracy would constitute a violation of the Sherman Act, as charged in the indictment. It would constitute no defense under the law, either to the employer

defendants or to the labor union defendants, that the combination and conspiracy may have been arrived at as the result of the settlement of a labor dispute; and it would likewise constitute no defense under the law that any such combination and conspiracy may have been arrived at as the result of proceedings in arbitration of such a dispute.

“Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of interstate commerce. But they can do this only so long as they act in their self interest and do not combine with non-labor groups. Here the Government charges that the labor union defendants combined and conspired with the non-labor defendants in entering into and doing the things [878] complained of, which charge, if true, is a violation of the Sherman Act. So, if any one or more of the labor union defendants combined and conspired with any one or more of the non-labor defendants, including those pleading nolo contendere, to do the things that the Government charges here, even though the motive of the labor union defendants was to promote their self interest, you must find the defendants, or any of them, who so combined and conspired, guilty as charged.

“Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this

case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label is not to be considered by you. The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants.

"The fact that the contracts introduced in evidence also included a clause which has often been referred to in the course of this trial and which recites that nothing in the contract is to be interpreted as to in any way interfere with any business of the Federal Government or that of an interstate common carrier or any regulation of the Federal Trade Commission or the Sherman Antitrust Laws is not conclusive as to the purpose of the contracting parties.

"In this case, several individuals are named as defendants, together with a number of corporations. While these defendants have been jointly indicted and charged with the offenses contained in the indictment, each defendant is entitled to an independent consideration by you of the evidence as it relates to his conscious [879] participation in the alleged unlawful acts, and it is your duty to determine the guilt or innocence of each individual separately. You will understand that you may convict or acquit any or all of the defendants as the

facts may warrant. This applies to corporations, associations and individuals alike.

“There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which persons give their attention to any question depending upon evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendants are entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict. Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his or her own view when convinced that it is erroneous. In determining what your verdict shall be you are to consider only the evidence before you. Any testimony as to which an objection was sustained, any testimony which was ordered stricken out, must be wholly left out of account and disregarded. The opinion of the judge as to the guilt or innocence of a defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury. For to the jury exclusively belongs the duty of determining the facts.

The law you must accept from the court as correctly declared in these instructions. Your verdict must be unanimous.

"After you have entered the jury room, you will choose one of your number to act as foreman. The Clerk has prepared [880] merely for your convenience a form of verdict. After the entitlement of Court and Cause, it reads as follows:

"We, the Jury, find as to the defendants at the bar on the First Count of the Indictment as follows:"—then follows a list of names of the defendants on trial. Opposite each name is a blank space where your foreman will record your verdict when you have agreed on one, and after your verdict has been filled out and signed by your foreman, you will be returned to court to announce your verdict.

"(The officers were thereupon sworn to take charge of the jury.)" [881]

"The Court: Now, gentlemen, you may state your exceptions.

"Mr. Howard: If the Court please, I assume that our statements will cover all of the union defendants and they probably may be supplemented by any other counsel.

"I wish to take the following exceptions to the charge, if your Honor please. Referring to the proposed instructions of the union defendants, we wish to except to the Court's not giving instructions No. 55, 56, 57 and 58 relating to the binding effect of representatives acts on the union defendant organizations, and with reference to the knowledge

of the union organizations of those acts. I assume that I should restrict myself to the numbers.

"The Court: I think so. I think that will be sufficient.

"Mr. Howard: We except, take the same exception to the refusal to give the following numbered instructions: 59, 60, 61, 62; 63, 64, 65, 66, 67, 68, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and consecutively right on through to 100, 101, 102, 105; that relates to the charge as refused to be given, of course.

"We wish to except to the charge that if it is found that the union defendants combined with non-labor defendants, then the motives or purposes of the defendants were immaterial, that evidence relating to the purpose or motive or reasons would not excuse the union defendants.

"We object, or, rather, we wish to, except expressly to the charge that we determine the guilt or innocence of the labor union defendants in the same way that you would the corporations with reference to the acts of their representatives and agents and with reference to the knowledge necessary to bind the union organizations, we take that exception. We except to the charge that where we find an employer and a labor union [882] defendant agreeing not to purchase lumber under different wage scales and affecting out of state lumber, or where they agree not to work on such material or lumber that is unfair to the employer, that such is a violation in and of itself of the Sherman Act; that

there is no defense here by reason of the fact that any contract or agreement or understanding was arrived at in settlement of a labor dispute, the charge that the existence or non-existence of a labor dispute here is immaterial, that is no defense that any contract was as a result of a proceeding, for arbitration of a labor dispute, or as a result of such arbitration and the fact that if the parties entered into a conspiracy not to work on material unfair to employers, regardless of their motives or intent on the part of the union defendants such would constitute a violation of the Act—I am referring to the Sherman Act.

“The Court: Yes.

“Mr. Howard: And if a conspiracy was entered into not to purchase or work upon lower wage scale material, affecting materials from outside the State of California, that that in and of itself would constitute a violation of the Sherman Act regardless of motive, intent or objectives with which the union defendants were acting, and it is no defense that any activities here resulted from labor disputes.

“I think, your Honor, that is just about what the—

“The Court: Well, if you should think of anything else—

“Mr. Howard: Yes. Then I understand the proposed instructions may become a part of the record.

“The Court: Yes. I am going to so instruct the clerk to bind them properly and file them.

"Mr. Howard: Your Honor understands the difficulty of compiling these exceptions so hurriedly, so if it can be supplemented in part by other counsel—— [883]

"The Court: Yes, I understand.

"Mr. Kerwin: There will naturally be a certain amount of duplication in the exceptions that I have.

"The Court: I think that is all right.

"Mr. Kerwin: It won't take me more than a few minutes to do what I propose to do, your Honor. I wish to take exceptions. For the purpose of brevity, also due to the difficulty of taking notes at a time like this, I think you will find that in the exceptions I am orally stating now, I am supplementing those stated by Mr. Howard.

"I except first, your Honor, to the portion of your Honor's charge which in effect characterized the nolo conderere pleas of the other defendants as admissions of guilt, and, in other words, to that part of the charge with respect to nolo contendere.

"I also except to your Honor's charge with respect to the associations or corporations and your definition of them as being in substance separate entities, similar entities, and that they could be similarly found guilty upon the basis of acts of certain individuals associated with them.

"I likewise except specifically to that portion of the charge in this connection dealing with the responsibility of unincorporated associations, particularly such as that involved here, for the acts of its agents.

"I also except to your Honor's definition of mill-work and patterned lumber as stated in your charge. And, of course, to the statement contained in the charge dealing with common purpose or design and in effect, inferentially, at least, referring to the subject of intent or motive at that particular point in the charge.

"I except further in connection with your Honor's description of the nature of the restraint and your statement, in effect, that the nature of the restraint and not the amount was the sole test of guilt. [884]

"The Court: You will find that in the case of—

"Mr. Kerwin: I am saying that, your Honor.

"The Court: Pardon me; I did not mean to interrupt you.

"Mr. Kerwin: I am referring to that portion of your charge, I stated before it was impossible for me to write in all these notes—

"The Court: Yes. Pardon the interruption.

"Mr. Kerwin: That is quite all right.

"I also wish to except to that portion of your Honor's charge dealing with the matter of the lower wage scale not being a matter of defense, but in effect being a substantial ground for conviction. And to that portion of the charge to the effect that conditions unfair to the employers would not excuse the actions here and would in effect, standing alone, constitute a violation of the statute. Further, in that connection, with respect to the fact that in the

arrival at the agreement there was no defense, rather, that the agreement was arrived at in settlement of a labor dispute, or in the arbitration of such a dispute being deemed by your Honor not to be a defense.

"I also except to the portion of the charge of your Honor which in effect states that an agreement to prevent the importation of unfair material was no defense, and, likewise, in that connection, to that portion of the charge stating in effect that an agreement to prevent importation of lower wage scale material is no defense; as, likewise, the statement that the agreement was arrived at in the settlement of a labor dispute, or the arbitration of a dispute, is no defense.

"I also except to that portion of your Honor's charge which in effect stated that the mere fact of an agreement with a non-labor defendant under the circumstances described in your Honor's charge would amount to a violation of the statute; also in that connection, the statement, in effect, that to promote [885] self-interest was no defense, and, furthermore, to that portion of the charge which in substance stated that the protection of the label or the use or non-use of the label was not to be considered by the jury.

"Next and finally, I wish to except to that portion of your Honor's charge which in effect stated that the sole question to be determined by the jury is whether or not there was a restraint of commerce pursuant to an agreement, and likewise,

finally, to that portion of your Honor's charge which in effect states that the provision with respect to a non-violation of the four phases of the Federal statutes contained in the several agreements would not be deemed as conclusive with respect to purpose.

"As I said before, I join in the exceptions taken by Mr. Howard, both as to denials by your Honor and also with respect to those affirmatively given to which I have just referred.

"Mr. Howard: If the Court please, if it may be understood, I am likewise joining in Mr. Kerwin's statements.

"The Court: Yes.

"Mr. Howard: In those that I did not mention to your Honor.

"The Court: Yes.

"Mr. Todd: The defendant Alameda County Building and Construction Trades Council asks its exception be noted to your Honor's failure to give instructions 1 to 13 inclusive, and we ask to concur in the exceptions made by other counsel to the instructions actually given.

"The Court: Very well.

"Mr. Faulkner: Your Honor, I join in the exceptions taken by Mr. Howard and Mr. Kerwin, and in addition thereto, your Honor, in connection with the charge made by the Court, your Honor in the commencement of the charge, or, after you had reached a stage in the charge where you had defined the employer group and the union labor group,

you indicated to the jury, as [886] I recall your charge in substance, that if they believed a combination or conspiracy existed and there was participation by either the labor group or the employer group, they would be guilty of the charge, and the element which your Honor left out, as I heard the instructions, was that the participation must be with knowledge of the combination.

"The Court: The reason I was smiling at you, Mr. Faulkner, I was wondering if I left anything out.

"Mr. Faulkner: Well, your Honor, the way I heard it, I think I did not hear the element of knowledge with relation to participation.

"The Court: I think it is all in there.

"Mr. Faulkner: Well, I may—you know, your Honor, when you sit there, and my hearing is not as good as it should be. Your Honor in the course of your charge paraphrased the indictment and indicated that the conspiracy was the basis of the charge. You ran through the various paragraphs of the indictment and then you came back in the charge and described the purpose of the conspiracy, the purpose of the conspiracy as declared in the instructions added to the purpose set forth in the indictment particularly in accentuating something in relation to the effect on the public paying more for lumber, and the exception I have, your Honor, is that your Honor went further into the purpose in the charge than the indictment did itself.

"Your Honor covered a series of instructions

concerning employers and unions agreeing not to purchase——

“The Court: Yes.

“Mr. Faulkner: You paraphrased the language——

“The Court: I know, but isn't that taken care of by the exceptions of Mr. Howard and Mr. Kerwin?

“Mr. Faulkner: That is what I was going to say. I think all of those have been covered, with the exceptions of Mr. [887] Howard and Mr. Kerwin, in which we join. Now, with respect to the proposed instructions of defendants, your Honor suggested, as I understood it, that we do that by number.

“The Court: How many requests do you suppose were offered?

“Mr. Faulkner: Too many.

“The Court: I will give you a guess.

“Mr. Faulkner: I imagine about two hundred.

“The Court: 286; enough of them.

“Mr. Faulkner: We except, your Honor, to the failure to give proposed instructions 27 to 31, inclusive, on the subject matter of accomplices.

“The Court: Can you designate those instructions to make it more sufficient?

“Mr. Faulkner: Yes, your Honor. 27 to 31 inclusive, the subject matter of the manner in which your Honor should consider the testimony of an accomplice, or a jury should consider——

"The Court: There was no accomplice in the case.

"Mr. Faulkner: Yes, your Honor. There was one or two of the witnesses who had signed the original contract involved in this case.

"The Court: I don't remember any accomplice on the stand.

"Mr. Faulkner: Mr. Buckley, the witness, he had signed the contract, and the contract was in evidence. Then there was a series of instructions, your Honor, that we next proposed that were on the subject matter of intent in joining a conspiracy, proposed instructions 42 and 43. Then we have a series of instructions, your Honor, on conspiracy and mere knowledge without participation is not an offense, participation without knowledge. Those instructions are numbered 44, 45, 46, 47, 47-A, 48, 49, 49-A. Your Honor will recall that one of the points that we made from time to time in the case was that the participation of a defendant in a conspiracy could not be es- [888] tablished by the declaration of one conspirator to another, it must be established by the conduct and the acts of the conspirator himself, based on the Kuhn case. Those were instructions 49, 49-A and 49-B.

"The question of intent, your Honor, in instructions 52 to 52-D.

"On the subject of circumstantial evidence being consistent with guilt or innocence, your Honor gave one instruction that touched upon that matter. I

don't think that the elements of that clearly indicated to the jury that it is their duty to follow the road of innocence where two roads may be followed.

"The Court: I think it was.

"Mr. Faulkner: Pardon me, your Honor?

"The Court: I thought it was.

"Mr. Faulkner: Well your Honor, at all events, you know that we proposed several instructions—

"The Court: Yes.

"Mr. Faulkner: And we except to the failure to give the instructions proposed.

"The definition of a labor dispute, proposed instructions 70, 71; right of the defendants to negotiate the agreement, instruction 72; what constitutes a bona fide labor dispute, 74-A; we except to the failure to give those; failure to give the instruction the authority of an agent is not to be presumed; the instructions based upon the Norris-LaGuardia Act, instruction 64; instruction 65, based upon that Act; 68, based upon a definition of a labor dispute, taken from the Hinton case. That is also instructions 69 and 70, 71. Instruction 77, the intent with regard to the conspiracy, 78, based upon the Norris-LaGuardia Act; instruction 61, that under the National Labor Relations Act, an employer is compelled to bargain collectively. [889]

"Then, your Honor, we proposed some additional instructions last week based on that contract of September 21: 'I charge you that entering into the contract in evidence here dated September 21, 1936, by the parties thereto did not in and of itself con-

stitute a violation of the Sherman Anti-Trust Act.' And the contract of 1938, and the other one following June 15, the date of the arbitration award, and the one dated October 18, 1938, did not in and of itself violate the Sherman Act; I refer to the instruction in effect that 'It is not a violation of the Sherman Act for an employer and a union, representing employees of the employers, to enter into a contract fixing a definite wage scale and to therein provide that said union members shall not work for others in the same economic area within a State at a lesser or lower wage scale.'

"Also, the failure to give the instruction: 'It is provided in the contract of September 21, 1936, and in both of the contracts entered into in the year 1938 as follows:

" 'Nothing herein is to be interpreted as preventing' etc.

" 'This paragraph contained in each of these contracts must be considered by you, together with all of the other provisions in the contract, in order to determine the contract entered into between the parties thereto.'"

"Also, to the same effect: 'I charge you that in the agreement of September 21, 1936, and the subsequent agreement of 1938, that is the agreement entered into immediately following the arbitration award of July 15, 1938, and the contract amending the same dated October 18, 1938'—This is the last one that was proposed by us; does that identify it for your Honor?

"The Court: How many in that list?

"Mr. Faulkner: There are six.

"The Court: Yes, six. Yes, I know.

"Mr. Faulkner: And I covered that in the last six instruc- [890] tions proposed, and we except to the failure to give them.

"The Court: Yes.

"Mr. Faulkner: I think, your Honor, Mr. Adams and I disagreed on one instruction with regard to the instruction defining millwork and patterned lumber. My recollection was that your Honor gave the instruction to the jury exactly as in the indictment, but Mr. Adams states that you added to that that millwork and patterned lumber include such wood products and such things as fixtures—

"The Court: Yes. There is a portion of it that is quoted. I quoted: 'Lumber which has been planed, cut, or assembled into standard or special patterns or forms, such as molding, sash, doors, tongue and groove pattern, shelf pattern, flooring, casing, rustic ceiling, rustic siding, and other products prepared for use in the construction of dwellings, buildings, fixtures and store fronts. It shall also include all work and the products thereof used in the construction of prefabricated buildings.'

"Mr. Faulkner: Yes, I think your Honor followed the indictment. We don't except to that, your Honor.

"The Court: That is where I took it from.

"Mr. Faulkner: We proposed an instruction,

your Honor; I am sure your Honor will identify it, to the effect that the restraint in interstate commerce must be unreasonable. We except to the failure to give that instruction.

"The Court: Yes, I remember that.

"Mr. Faulkner: Is that a sufficient identification?

"The Court: Yes, I remember it.

"Mr. Faulkner: Your Honor instructed that the stoppage of one carload of lumber would be enough and we proposed an instruction on the subject that sufficient instances of the stoppage of articles in interstate commerce—we except to [891] the one your Honor gave and the failure to give the one we proposed.

"Mr. Bacigalupi: Your Honor, will it be understood that all the instructions excepted to, proposed and excepted to by Mr. Faulkner, may it be understood I join in those, and ask for the benefit of all exceptions made by other counsel.

"The Court: Yes.

"Mr. Kerwin: Your Honor, may I make just one more short request. As I understand it, it was your Honor's thought that where the exception was applicable and unless someone signified an intention to the contrary, the exception was to be available to all. Now, with respect to these exceptions to the charge, you said 287; we have been passing these things back and forth, or exchanging them, and I can well imagine they might have gotten beyond 287. I want to just make sure we all understand

that all of the exceptions to the charge of your Honor redound to the benefit of all the individuals, associations, corporations, or all the defendants of any character, whether proposed by—no matter who proposed by, each will receive the same benefit of that.

“The Court: I see no objection to it. It is agreeable to me.

“Mr. Howard: May it also be understood, your Honor, I realize the difficulty of reporting exceptions of this nature in the manner done; I presume we can stipulate as to any necessary corrections. Would that be agreeable to the Government?

“The Court: I don't want any request for—I don't think that would be the proper thing to do. State your exceptions if you have any.

“Mr. Howard: I mean as to the inaccuracies of reporting.

“The Court: Oh, well, I don't imagine there would possibly be any trouble about that. [892]

“Mr. Faulkner: There is one instruction that your Honor failed to give, instruction No. 5, to the effect that your definition that millwork or patterned lumber does not include cabinet fixtures and store fronts.

“The Court: Yes.

“We will take a recess.

(The jury returned into court at five p. m., December 12, 1941.)

“The Court: United States v. Lumber Products Association, et al. The jurors are present.

"Ladies and gentlemen, have you agreed upon a verdict?

"The Foreman: We have, your Honor.

"The Court: You will hand it to the Bailiff. The Clerk will read the verdict.

"The Clerk: Ladies and Gentlemen, hearken unto your verdict as it will stand recorded.

"We, the Jury, find as to the defendants at the bar on the First Count of the Indictment as follows:

"Brass & Kuhn Company; Guilty.

"Commercial Fixture & Store Front Institute; Guilty.

"Fink & Schindler Co.; Guilty.

"L & E Emanuel, Inc.; Guilty.

"Mangrum, Holbrook & Elkus, a corp.; Guilty.

"Mullen Manufacturing Company; Guilty.

"Alameda County Building & Construction Trades Council; Guilty.

"The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; Guilty.

"The United Brotherhood of Carpenters and Joiners of America; Guilty.

"The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42; Guilty.

"The United Brotherhood of Carpenters and Joiners of [893] America Millmen's Union No. 550; Guilty.

"J. F. Cambiano; Guilty.

"Joseph L. Emanuel; Guilty.

"J. G. Ennes; Guilty.

"Charles Helbing; Guilty.

"C. H. Irish; Guilty.

"W. P. Kelly; Guilty.

"Walter O'Leary; Guilty.

"John Mullen; Guilty.

"Emil H. Ovenberg; Guilty.

"Charles Roe; Guilty.

"Dave Ryan; Guilty.

"W. L. Wilcox; Guilty.

"The Court: Thank you, Ladies and Gentlemen; you are excused until further notice. You may now retire." [894]

[Title of District Court and Cause.]

### INSTRUCTIONS REQUESTED BY CERTAIN UNION DEFENDANTS

Now come the defendants Bay Counties District Council of Carpenters, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, the United Brotherhood of Carpenters and Joiners of America, Jr. F. Cambiano, Dave Ryan, James Ricketts, Charles Roe, Charles Helbing, D. J. Edwards, W.

P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, [895] J. P. Sholden, C. H. Irish, Otto W. Sammet, Emil H. Ovenberg and George Smoot and hereby present the following proposed instructions for the jury and request the Court to give such instructions, and each of them, and each part of each of them; to the jury upon the submission of the case, and said defendants hereby so move the Court, requesting further the right to propose additional requests for instructions prior to the opening of the argument upon questions arising during the trial.

Dated: November 21st, 1941.

JOSEPH O. CARSON  
JOSEPH O. CARSON, II  
CHARLES H. TUTTLE  
THOMAS KERWIN  
HARRY N. ROUTZOHN  
HUGH K. McKEVITT  
JACK HOWARD

Attorneys for said Defendants.

Instruction No. 55

You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to

find that the union had authorized or ratified the act.

U. S. v. Int. Fur Workers (1938); 100 Fed. 541, 547. (2nd Cir.)

Instruction No. 56

You are instructed that no labor union or organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find [896] upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof.

Norris LaGuardia Act, 47 Stat. 71; 29 U. S. C. A. Sec. 106.

Instruction No. 57

You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition.

Coronado v. United Mine Workers (1925) 268 U. S. 295.

Instruction No. 58

You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof.

Norris LaGuardia Act, 47 Stat. 71; 29 U. S.

C. A. Sec. 106. [897]

Instruction No. 59

This is not a civil case. It is a criminal prosecution. In such cases, a criminal intention must accompany the act in order to constitute a crime. And the act itself, while it may be the basis for the inference of a criminal intention by the jury, if unaccompanied by such criminal intent, is not crime.

Instruction No. 61

Under the penal provisions of the Sherman Act, upon which the indictment in this case is based, it devolves upon the prosecution to prove beyond a reasonable doubt that the defendants had a criminal intent, and criminal intent means an intent or purpose to do knowingly and wilfully that which is condemned as wrong by the act.

Instruction No. 62

You are instructed that intent is a fact to be

proved as any other fact; it is the state of mind from which an act is done; it is the motive from which an act springs. While the law presumes that a person intends the natural and probable consequences of acts intentionally done, and that an unlawful act implies an unlawful intent, such presumption does not arise from an act or series of acts which are not of themselves unlawful. The burden of establishing an illegal intent is upon the prosecution and continues throughout the case until it is proven by the evidence, to the exclusion of reasonable doubt, that an illegal intent exists.

McKnight v. U. S. (1902) 115 Fed. 972 (6th Cir.)

Instruction No. 65

You are instructed that the Sherman Act is not aimed at [898] the policing of interstate transportation or movement of goods. You are instructed that a labor union has a constitutional right to picket any railroad car or other container of products which is considered unfair to union labor because of the conditions of employment under which such products have been produced in order to advertise to the world that such goods are unfair. You are further charged that any person may lawfully decline to work upon or handle such products considered unfair to the labor organization with which he is affiliated and none of such acts is unlawful under the Sherman Act.

Apex Hosiery v. Leader (1940), 310 U. S. 469;

Thornhill v. State of Alabama, (1940), 310  
U. S. 88;

Clayton Act, Sec. 6-20, 38 Stat. 730;

Norris-LaGuardia Act, 47 Stat. 29.

Instruction No. 66

You are instructed that one party to an agreement may violate the Sherman Act, whereas the other party may not because of the difference in intent and motives which may actuate the making of the contract and its performance.

Hood Rubber v. U. S. Rubber Co., (1916), 229  
Fed. 583 (D. C. Mass.)

Instruction No. 67

You are instructed that parties to an agreement may enter into it actuated by different motives and intent. You are instructed that if the labor defendants entered into the agreements involved in this case for the purpose of furthering their own interests and labor objectives—and not merely as tools or instruments to carry out some wrongful intent, if any, [899] of the employers, then even though you should find the existence of a wrongful intent on the part of the employers, you are instructed that you must acquit the labor defendants and they are not guilty of the charges contained in the indictment.

Apex Hosiery v. Leader (1939), 310 U. S. 469;  
Hood Rubber vs. U. S. Rubber Co., (1916), 229  
Fed. 583 (D. C. Mass.).

Instruction No. 68

You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber in order to eliminate competition and effect prices of such interstate commerce.

Clayton Act, Sec. 6-20, 38 Stat. 730;

Norris-LaGuardia Act 47 Stat. 29.

Instruction No. 75

You are instructed that if you believe from the evidence that the union defendants in making and carrying out the agreement of September 21st, 1936 and any renewals thereof were acting in their own self interest to carry out legitimate objectives of labor, such as the creation of a uniform standard of wages for the industry, the improvement of wages, the gaining of employment or the unionization of other mills in the industry, the fact that some or all of the employers had a different or ulterior motive in making and carrying out the agreement would not make such activities on the part of the union defendants unlawful but, on [900] the contrary, the carrying out of such objects through the medium of the agreement would be lawful and not a violation of the Sherman Act on the part of the union defendants.

U. S. v. B. Goedde Co. (D. C. E. D. Ill.—Sept. 5th, 1941—Judge Lindley—not yet reported)  
46 Fed. Supp. 523.

Instruction No. 76

An attempt to unionize non-union workers and improve working conditions of labor employed in an industry involves a labor dispute within the meaning of the Norris-LaGuardia Act, and such activity on the part of a labor union is therefore exempted from the operation of the Sherman Act, and does not violate that Act.

Drivers Union v. Lake Valley Co. (1940), 311 U. S. 91;

U. S. v. Hutchison (1941), 312 U. S. 219.

Instruction No. 77

You are instructed that a labor dispute "includes any controversy covering terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." A person is participating or interested in a labor dispute if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

Norris-LaGuardia Act 47 Stat. 730, Sec.  
13B-C. [901]

U. S. v. Hutchison (1941), 312 U. S. 219.

Instruction No. 78

In determining whether a case involves or grows out of a labor dispute the words "terms or conditions of employment" are not limited to meaning only the ordinary case where one person hires out to another for a stipulated wage or salary. Employment means act of employing or state of being employed; that which engages or occupies or which consumes time or attention. A case involves or grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein and a person or association shall be held to be participating or interested in a labor dispute if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs. The term "labor dispute" includes any controversy concerning terms or conditions of employment.

You are, therefore, instructed that the agreement of September 21, 1936 between employers and the union organizations which resulted from negotiations to fix terms and conditions of employment involved and grew out of a labor dispute and the making of such agreement on the part of the union defendants was not a violation of the Sherman Act. You are further instructed that the carrying out of and enforcement of such agreement by the union

defendants through peaceful means such as picketing, strikes or threats to strike would not violate the Sherman Act on the part of the union defendants. You are further instructed that a conspiracy or combination to accomplish what is lawful by lawful acts or agreements on the part of an alleged conspirator cannot be unlawful. [902]

U. S. v. Goedde Co. (#15253 D. C. E. D. Ill.—

Judge Lindley—Sept. 6, 1941—not yet reported) 46 Fed. Supp. 523

Hinton v. Colombia River Packing 117 F. 2d 310 (9 cir—1941)

Milk Drivers Union v. Lake Valley Inn 311 U. S. 91 (1941)

#### Instruction No. 79

You are instructed that if the agreement of September 21, 1936 between the union defendants and employers was made after or as a result of a controversy or dispute as to wages and conditions of employment and the union defendants demanded or wanted the provision thereof that no material should be purchased or work done ~~thereon~~ which had been manufactured or distributed under rates of wage and working conditions not conforming to such agreement, in order to establish a uniform condition of labor conditions, unionize other mills in the industry, gain jobs or better wages, or for any other legitimate purpose of a labor organization, you should acquit the union defendants for then neither the making of said agreement, nor any

renewal thereof, nor the carrying out of such an agreement by the means charged in the indictment, is unlawful on the part of the union defendants.

Clayton Act, Sec. 6-20 38 Stat. 730;

Norris-LaGuardia Act 47 Stat. 29;

Apex Hosiery v. Leader (1939) 310 U. S. 469;

U. S. v. Hutchison (1941) 312 U. S. 219.

Instruction No. 80

You are instructed that if the agreements between employers and employees, and any activities of the labor defendants [903] pursuant thereto arose from a labor dispute or labor disputes, then such agreements or activities on the part of the labor defendants are not unlawful as to such labor defendants, regardless of their intent and regardless of the intent of the defendant employers with whom they are charged with having conspired to violate the Serman Act, and if such agreements or activities are the result of labor disputes, then you are instructed to acquit the union defendants.

Clayton Act, Secs. 6-20 38 Stat. 730;

Norris-LaGuardia Act 47 Stat. 29;

U. S. v. Hutchison (1941) 312 U. S. 219.

Instruction No. 81

Even though labor agreements or activities intend to restrain or impede interstate shipments, or commerce in the sense that a person must be taken to intend the natural and probable consequence of his act, still such is not a violation of the Sherman Act if such is merely incidental to the enforcement of

union demands, for such is not the kind of restraint of trade or commerce which the Sherman Act condemns.

Restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under the Sherman Act. The elimination of price competition based on differences in labor standards is the objective of any national labor union, for in order to render a labor organization effective it must eliminate the competition from non-union goods. You are therefore instructed that if you find that the labor defendants acted in their own self interest and to carry out their own objectives of labor such [904] as a better wage scale and conditions of employment and more jobs for the union members, they are not guilty of any violation of the Sherman Act.

*Apex Hosiery v. Leader* (1940) 310 U. S. 469.

Instruction No. 82

Either agreements or acts done in furtherance thereof by labor defendants for the purpose of furthering the unionization of other shops in the same industry in order to better the conditions and wages of the employees is a legitimate labor activity and does not violate the Sherman Act even though there is also present the motive of lessening interstate competition for union operators, which in turn lessens the pressure of the employer for reduction

of the union scale or resistance to an increase. To find any labor defendant guilty of violating the Sherman Act you must find beyond a reasonable doubt the existence of a primary intent to directly restrain interstate commerce. If the effect upon interstate commerce is merely incidental to an intent to improve working conditions, it is your duty to acquit the labor defendants.

United Mine Workers v. Penn Mining Co.  
(1924) 300 Fed. 965 (2nd Cir.) cer. denied  
265 U. S. 630.

Instruction No. 83

The making of the agreement of September 21, 1936 by the defendant unions was not a violation of the Sherman Act.

Instruction No. 84

The execution of the agreement of September 21, 1936 would not warrant a conviction under this indictment because it does not constitute the conspiracy described therein. [905]

Instruction No. 85

The union defendants had the lawful right to take the position as set forth in the agreement of September 21, 1936 that members of their unions would do no work upon any material or article that has had any operation performed on same by saw mills, mills or cabinet shops or their distributors that did not conform to the rates of wage and working conditions prescribed by the agreement of September 21, 1936, and such acts on the part of the

unions and their members do not constitute a violation of the Sherman Act.

Instruction No. 86

Workmen are under no legal obligation to work on any kind of material. If the defendant unions and their members deemed it to their interest to refuse to work on material not manufactured in conformity with the rates of wage and working conditions prescribed by the agreement of September 21, 1936, they had a legal right so to do and the mere fact that such material may have been made in some state other than California does not render such refusal unlawful or in violation of the Sherman Act.

Instruction No. 87

In order to find any labor defendant or organization guilty in this case, you must find that he or it was not acting with the intent of furthering the legitimate objectives of labor relating to the improvement of conditions of employment, but on the contrary with the specific and sole intent of being a tool or instrument of the employers to suppress competition or fix prices.

Apex Hosiery v. Leader (1940), 310 U. S. 469. [906]

Instruction No. 88

You are further instructed as to both union organizations and individual defendants affiliated with such union organizations that since the acts charged here against said defendants are relevant

to labor conditions and legitimate objectives of labor, in order to find any of such defendants guilty you must find beyond a reasonable doubt that he or it either participated in, actually authorized or ratified such an act, not with the intent of carrying out legitimate objectives of labor but in combination or conspiracy with the employers with the unlawful intent of restraining interstate commerce by restraining or eliminating the competition from out of the state material.

You are further instructed that since the acts attributed to the labor defendants are lawful, unless participated in, expressly authorized or ratified with such unlawful intent, the fact that such activities in fact result in a restraint upon interstate commerce does not give rise to the presumption of an unlawful intent, since if two legal presumptions may reasonably arise from the evidence, the law will presume a legal rather than an illegal intent.

*Morris-LaGuardia Act. Stat. 71*

*Dickerson v. U. S. 18 F. 2d 887 (8 Cir—1927)*

**Instruction No. 89**

The negotiating, making or carrying out by the union defendants of the agreement of September 21, 1936 and the provisions thereof that no work would be done on any material or article having an operation performed on it by mills, saw mills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agreement, or the negotiating, making or carrying

out of any subsequent agreement or understanding continuing such provision of the agreement of [907] September 21, 1936, in effect is lawful and not a violation of the Sherman Act on the part of said union defendants, unless you find that such agreement was not made to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and patterned lumber in interstate commerce.

Apex Hosiery v. Leader (1939) 310 U. S. 469;  
U. S. v. Hutchison (1941) 312 U. S. 219.

Instruction No. 90

You are instructed that the negotiation and making of such an agreement as the contract of September 21st, 1936 covering wage scale and working conditions is within the legitimate objective of a labor union. You are further instructed that the elimination of price competition based upon differences in labor standards is the objective of any national labor union and with the object of promoting this interest, or any other legitimate object of labor such as the unionization of other mills in the industry, defendant labor unions had the right to agree that no material should be purchased from, or work done on any material or article that had any operation performed on same by saw mills, mills, or cabinet shops, or their distributors not

conforming to the rates of wage and working conditions of such agreement. You are further instructed that the labor defendants had the right to carry out and enforce the carrying out of such agreement in their own interest by peaceful and lawful means such as picketing and threatening to picket; strikes or threats to strike and advertising by other peaceful means the existence of material manufactured or handled under different conditions and standards and considered [908] unfair to defendant unions.

Apex Hosiery v. Leader (1939) 310 U. S. 469;  
U. S. v. Hutehison (1941) 312 U. S. 219.

Instruction No. 91

You are instructed that the agreement of September 26th, 1936 on its face relates to wages and conditions of employment for the union defendants and the provision thereof to the effect that no material should be purchased or worked upon that had previously had an operation performed thereon by saw mills, mills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agreement, was a lawful provision for the unions to agree upon. You are further instructed that the carrying out of such agreement by the peaceful means as charged in the indictment was likewise lawful on the part of the union defendants and you are instructed to acquit the union defendants unless you find that in the making and carrying out of such agreement the

1188 *Lumber Products Assn., Inc., et al.*

unions were not acting in their own self interest and to carry out their own labor objectives.

U. S. v. B. Goedde and Co. (D. C. E. D. Ill.  
Criminal No. 15253—Judge Lindley—Sept.  
5, 1941—not yet reported) 46 Fed. Supp. 523;  
U. S. v. Hutchison, 312 U. S. 219.

Admission of Service on the back of Instruction  
No. 91:

Receipts of a copy of the within Instructions is  
hereby admitted this 21st day of November, 1941.

CHAS. S. BURDELL,

Attorneys for U. S. of  
America.

[Endorsed]: Filed Dec. 12, 1941. [909]

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[Title of District Court and Cause.]

**ADDITIONAL REQUESTS FOR INSTRUCTIONS BY ALL UNION DEFENDANTS.**

The union defendants herein hereby present the following additional instructions for the jury and request the Court to give such instructions, and each of them, and each part of each of them, to the jury upon the submission of the case and said defendants hereby so move the Court.

Dated this 10th day of December, 1941. [910]

(Signed by Attorneys for Union Defendants.)

Receipt of copy of Additional Requests for In-

structions by all Union Defendants admitted this 10th day of December, 1941.

FRANK J. HENNESSY

TOM C. CLARK

Attorneys for United States  
of America.

Instruction No. 92

You are instructed that the agreement dated September 21, 1936 was legal on its face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes  
730. [911]

Instruction No. 93

You are instructed that the agreement of 1938 was legal on its face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 94

You are instructed that the agreement of 1938 as amended or modified under date of October 18, 1938 was legal on its face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 95

You are instructed that the agreements effective May 1st, 1939 to May 1, 1940 were legal on their face.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 96

You are instructed that the clause in such contracts that "Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Law" was a lawful provision in such contracts and that any defendant who relied thereon as exempting from the operation of the preceding clauses inter-state commerce should be acquitted for reliance on such clause would be inconsistent with an intent to conspire [912] against inter-state commerce.

Instruction No. 97

You are instructed that the union defendants have the right to decline to work or agree not to work upon products made by a CIO or a company union in carrying out their own labor objectives.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

Instruction No. 98

You are further instructed that in the exercise of the right of the union defendants to refuse to handle or work on such products considered unfair, the union defendants had the right to picket freight cars containing such material and to advertise to the world the fact that such material was "hot" or unfair.

Norris-LaGuardia Act, 47 Statutes 29;

Clayton Act, Section 6-20, 38 Statutes 730.

## Instruction No. 99

You are further instructed that where such unfair or "hot" material was found mingled in a shipment with fair or labeled lumber which could not be reached without first removing the unfair lumber, or was so mingled as to attempt a fraud on the aforesaid policy of the union not to handle or work upon such unfair material, then the unions and any individuals affiliated with such unions had the right to refuse to touch or work on the cargo as a whole.

Norris-LaGuardia Act, Statutes, 29;

Clayton Act, Section 6-20, 38 Statutes  
730. [913]

## Instruction No. 100

You are instructed that by the indictment in this case it is charged that defendant unions were not attempting to enforce or protect the right to bargain collectively nor acting in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the alleged combination and conspiracy was alleged to be directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area, and you are instructed that the burden is upon the prosecution to establish to your satisfaction beyond a reasonable doubt and to a moral certainty that such charges are true, or you should acquit the union organizations and each individual union defendant.

Indictment, Par. 29, page 22.

## Instruction No. 101

You are instructed that in determining the intent with which any union defendant acted it is the policy of the City and County of San Francisco in the letting of contracts for public works and the purchase of public supplies to favor local industry by a price differential and to also favor the employment of local labor.

Sect. 123, Part 1 of the Municipal Code of the City and County of San Francisco

Sect. 98, Charter of the City and County of San Francisco, as amended 1935.

## Instruction No. 102

You are further instructed that activities to obtain the benefit of such local laws and in furtherance of such public policy favoring local products in public contracts or the advocacy of the use of local products as opposed to outside products by [914] peaceful, conventional means do not violate the Sherman Act. Such activities are entirely legal so long as illegal means of coercing the exercise of free will are not employed.

McKay v. Retail Auto Salesmen, 16 Cal. 2d 311.

## Instruction No. 103

You are instructed that the advocacy of the use of local products as opposed to outside products by peaceful, conventional means does not violate the Sherman Act. Such activity is entirely legal so long as illegal means of coercing the exercise of free will are not employed.

McKay v. Retail Auto Salesmen, 16 Cal. 2d 311.

Instruction No. 105

You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber.

Clayton Act, Sec. 6-20, 38 Stat. 730;

Norris-LaGuardia Act, 47 Stat. 29.

[Endorsed]: Filed Dec. 12, 1941. [915]

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**INSTRUCTIONS REQUESTED BY DEFENDANT  
ALAMEDA COUNTY BUILDING AND  
CONSTRUCTION TRADES COUNCIL**

Comes now defendant Alameda County Building and Construction Trades Council, and hereby joins in the instructions requested by other union defendants herein, that is to say, the instructions requested by the defendant Bay Counties District Council of Carpenters and others, represented by Hugh K. McKevitt, Esq., and others; also the instructions requested by defendant United Brotherhood of Carpenters and Joiners of America, represented by Charles H. Tuttle, Esq.; in addition to such instructions so requested by this defendant in conjunction with such other union defendants, this defendant presents the following proposed instruc-

tions for the jury and hereby requests the Court to give such instructions and each of them and each part of them to the jury upon the submission of the case, and said defendant hereby further moves the Court requesting the privilege to propose additional requests for instructions on questions arising during the trial.

Dated: This 12th day of November, 1941.

Attorney for said Defendant

Filed: Dec. 12, 1941

WALTER B. MALING,

Clerk. [916]

Instruction No. 1

You are instructed that the evidence in this case is insufficient to warrant a conviction of the defendant Alameda County Building and Construction Trades Council upon the charge contained in Count One in the indictment herein, and the Court therefore instructs you to render a verdict of not guilty as to the said defendant Alameda County Building and Construction Trades Council upon the charge contained in said count one in said indictment.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Instruction No. 2

I instruct you that the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public

not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress.  
Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

U. S. v. Hutcheson, 61 S. Ct. 463, 85 L. Ed. 412

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 659. [917]

Instruction No. 3

I instruct you that under the Constitution of the United States and under the Constitution of the State of California, all citizens are guaranteed the right of free speech. I further instruct you that if you find that the defendants or some of them participated in picketing certain places of business, and that such picketing was carried on by peaceful means, then I instruct you that such picketing was an exercise of the right of free speech by those defendants who participated in the picketing.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299.

Thornhill v. Alabama, 60 S. Ct. 736, 310 U. S. 88, 84 L. Ed. 659.

People v. Carlson, 60 S. Ct. 746, 310 U. S. 106, 84 L. Ed. 668.

*Lisse v. Local Union*, 2 Cal. (2d) 312.

*McKay & Allied cases*, 16 Cal. (2d) 311, et seq. [918]

Instruction No. 4

I instruct you that under the law in California, picketing carried on for the purpose of seeing who can be the subject of persuasive inducement is legal. Therefore, I instruct you that if you find that the picketing in this case was conducted for the purpose of peaceful persuasion, then I instruct you that such picketing is legal.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

*Lisse v. Local Union*, 2 Cal. (2d) 312.

*McKay & Allied Cases*, 16 Cal. (2d) 311, et seq.

Instruction No. 5

Under the laws of the State of California, picketing may lawfully be carried on by any group of citizens, and so long as peaceful means are used in connection with the picketing, such picketing is a mere exercise of the right of free speech which is guaranteed to every citizen by the Constitution of the United States and by the Constitution of the State of California.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299.

People v. Carlson, 60 S. Ct. 746, 310 U. S. 106,  
84 L. Ed. 668.

Thornhill v. Alabama, 60 S. Ct. 736, 310 U. S.  
88, 84 L. Ed. 659.

Lisse v. Local Union, 2 Cal. (2d) 312.

McKay & Allied Cases, 16 Cal. (2d) 311, et  
seq. [919]

Instruction No. 6

I instruct you that under the laws of California, picketing is lawful if carried on by peaceable and persuasive means. If you find that the picketing in this case was carried on for the purpose of actually interfering with the peaceable entrance to a place of business, or peaceable exit therefrom, then such picketing was unlawful, but if you find that such picketing was carried on for the purpose of influencing or persuading members of the public by peaceful means, then I instruct you that such picketing was lawful.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312, 321.

McKay & Allied Cases, 16 Cal. (2d) 311, et  
seq. [920]

Instruction No. 7

I instruct you that these defendants had a legal right, under the laws of the State of California, to

withdraw social and business intercourse with any person or persons, and that they also had the right by all legitimate means, that is to say, by fair publication and fair oral or written persuasion to induce others interested in or sympathetic with their cause to withdraw their social intercourse and business patronage from any such persons or persons.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

Pierce v. Stablemen's Union, 156 Cal. 70.

Parkinson v. Building Trades Council, 154 Cal. 581.

Senn v. Tile Layers Union, 57 S. Ct. 857, 201 U. S. 468, 81 L. Ed. 1229. [921]

#### Instruction No. 8

You have heard the witnesses and the attorneys in this case refer to a boycott carried on by the defendants or some of them against certain places of business. The Supreme Court of California has defined a boycott as being an organized effort to persuade or coerce, which may be legal or illegal according to the means employed. In other words, and as applied to the facts in this case, the defendants had a legal right to conduct an organized boycott of certain places of business, and in pursuance of the boycott, to endeavor to persuade the public not to patronize the places of business under boycott, provided no illegal means were used in the carrying out of the boycott. Therefore, I instruct you that if you find that the defendants did carry

on an organized boycott of such places of business, but that in doing so, they neither committed nor threatened any act of violence, then I instruct you that the boycott was legal.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

*Lisse v. Local Union*, 2 Cal. (2d) 312, 321.

*Pierce v. Stablemen's Union*, 156 Cal. 70, 75, 76.

*McKay & Allied Cases*, 16 Cal. (2d) 311, et seq. [922]

Instruction No. 9

I instruct you that if you find that the acts committed by the defendants, as shown by the evidence, were in themselves legal, and not wrong, I advise you that those acts are not rendered illegal merely by reason of any bad motive or bad or malicious intent with which such acts were done.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

Authorities:

*Parkinson v. Building Trades Council*, 154 Cal. 581, 593-597.

Instruction No. 10

The proof required to show ratification by defendant Alameda County Building & Construction Trades Council after actual knowledge of unlawful acts of its individual officers, members or agents is

proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council.

Given.

Refused. Exception allowed. ✓

Given as modified. Exception allowed.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106. [923]

#### Instruction No. 11

The proof required to show actual participation by defendant Alameda County Building & Construction Trades Council in unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106.

#### Instruction No. 12

The proof required to show actual authorization by defendant Alameda Building & Construction Trades Council of unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106.

Instruction No. 13

Defendant Alameda County Building & Construction Trades Council shall not be held responsible or liable for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in or actual authorization of such acts or of ratifications of such acts after actual knowledge thereof.

Authorities:

Federal Anti-Injunction Act (Norris-LaGuardia Act) 29 U. S. Code, Section 106.

[Endorsed]: Filed Dec. 12, 1941. [924]

[Title of District Court and Cause.]

DEFENDANTS' REQUEST FOR  
INSTRUCTIONS

Defendants, Mullen Manufacturing Co., Joseph J. Schmidt, Fink & Schindler Co., George Randolph, Herman Sichel, L. & E. Emanuel, Inc., Leo Roselyn, Henry A. Schulte, Oscar H. Ostlund, Braas & Kuhn Co., John Mullen, J. G. Ennes, Charles F. Stauffacher, Joseph L. Emanuel, Richard Kuhn, Commercial Fixture & Store Front Institute, respectfully request the above entitled Court to give the within Instructions.

Dated: November 10th, 1941.

HAROLD C. FAULKNER  
CHARLES ALBERT ADAMS  
MELBERT B. ADAMS

Attorneys for Certain Defendants.

1202 *Lumber Products Assn., Inc., et al.*

Instruction No. 27

The testimony of an accomplice is not to be judged by the same standard as the testimony of any other witness, but such evidence is to be acted upon with great caution, and is [925] subject to grave suspicion.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....

Judge.

People v. Dail, 43 A. C. A. 912.

Instruction No. 28

I charge you that if any witness, who is an accomplice within the meaning of that term as I have defined it to you, has appeared in this case and testified on behalf of the Government, then I charge you that you should view the testimony of such witness with distrust and caution.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....

Judge.

Instruction No. 30

An accomplice is one who is liable to prosecution for the identical offense charged against the defendants on trial in the cause in which the testimony of the accomplice is given. I further charge you that it is for you to determine, as a question of fact in

this case, whether or not a particular witness is an accomplice, as I have heretofore defined that term to you. If you do find that a witness who has testified in this cause is an accomplice, then I instruct you that the testimony of such an accomplice ought to be viewed with distrust. [926]

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Instruction No. 52

I charge you that there are certain types of crime which are complete when the person intentionally does the acts denounced by the law. There is another class of crime which requires not only the deliberate act but a further aggravation of that act, to-wit: specific intent. The first intent, that is, general intent, is merely to do the act; the second class is to do the act and aggravate it by specific intent that this act may bring about a certain result. In the instant case, the indictment charges the defendants with conspiring and agreeing together for the purpose of unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber as defined in the indictment. Under this charge it is, therefore, necessary for the jury to find that each defendant joined a conspiracy with specific intent of unduly, unreasonably and directly restraining interstate

trade and commerce in millwork and patterned lumber as defined in the indictment.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Instruction No. 61

You are instructed that under the National Labor Relations Act employers may be compelled to negotiate and bargain [927] collectively, with the representatives of their employees.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Title 29, U. S. C. A., Sec. 160.

Instruction No. 62

You are instructed that the public policy of the United States guarantees full freedom to labor to organize for the purpose of negotiating the terms and conditions of employment and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

It is the public policy of the United States to encourage industrial peace by the execution of collective bargaining agreements between labor and employer.

You are instructed, therefore, to draw no inference of guilt or wrongdoing merely because of the

execution between defendants of an agreement respecting wages, hours and working conditions.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

T. 29 U. S. C. A., Sec. 102,

T. 29 U. S. C. A., Sec. 151

(Norris-LaGuardia Act)

Instruction No. 63

You are instructed that employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. [928]

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Title 29, U. S. C. A., Sec. 157.

Instruction No. 65

You are instructed that under the National Labor Relations Act it would be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees.

Given.

Refused. Exception-allowed.

1206 *Lumber Products Assn., Inc., et al.*

Given as modified. Exception allowed.

.....  
Judge.

Title 29, U. S. C. A., Sec. 158.

Instruction No. 66

You are instructed that if the agreement of September 21, 1936 was the result of a labor dispute between defendant unions and defendant Commercial Fixture & Store Front Institute group, and that said contract was one providing only for wages, hours and working conditions, then said contract would not be a violation of the Sherman Anti-Trust Act.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

United States v. Hutcheson, 61 S. Ct. 464.

Instruction No. 68

You are instructed that even if you find that defendant [929] manufacturers entered into an agreement with defendant unions to purchase only mill-work and patterned lumber manufactured under certain specified conditions, or to buy them only from union shops, if such agreement was one of the terms or conditions of employment arising out of a labor dispute between them, such agreement would not be a violation of the Sherman Anti-Trust Law.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Hinton v. Columbia River Packer's Ass'n. 117  
Fed (2) 310, (9th Circuit).

United States v. Hutcheson, 61 S. Ct. 463, 29  
U. S. C. A., Section 52.

Instruction No. 69

You are instructed that if you find that defendant manufacturers purchased only millwork and patterned lumber manufactured under certain specified conditions, or only from manufacturers located in the San Francisco Bay Area, pursuant to an agreement with defendant unions concerning terms or conditions of employment arising out of a labor dispute, then the defendants would, upon such facts, be not guilty of a violation of the Sherman Act.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Hinton v. Columbia River Packer's Ass'n.,  
117 Fed. (2) 310 (9th Circuit)

United States v. Hutcheson, 61 S. Ct. 463  
29 U. S. C. A., Sec. 52. [930]

Instruction No. 70

A labor dispute may be defined as a controversy concerning terms or conditions of employment.

A controversy by defendant manufacturers with defendant unions concerning whether defendant manufacturers should purchase millwork and patterned lumber manufactured under certain specified conditions would be a controversy concerning terms of employment, and therefore, a labor dispute.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Hinton v. Columbia River Packer's Ass'n.,  
117 Fed. (2) 310 (9th Circuit)

Instruction No. 71

You are instructed that a contract concerning terms or conditions of employment between organizations of employers and organizations of employees, arising or growing out of a labor dispute, is not a violation of the Sherman Anti-Trust Act.

A provision in a contract, arising out of a labor dispute, requiring defendants to purchase only material that was produced under certain specified conditions would be one concerning terms or conditions of employment.

Given.

Refused. Exception allowed.

Given as modified. Exception allowed.

.....  
Judge.

Hinton v. Columbia River Packer's Ass'n.,  
117 Fed. (2) 210, (9th Circuit)

United States v. Hatcheson, 61 S. Ct. 463

29 U. S. C. A. Sec. 52

[Endorsed]: Filed Dec. 12, 1941. [931]

[Title of District Court and Cause.]

### MOTIONS FOR NEW TRIAL

Now come the defendants The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil Ovenberg, Dave Ryan, Charles Roe and W. L. Wilcox and severally and separately move the Court for an order granting [932] a new trial herein on the following grounds, and each of them:

1. That the verdict is contrary to law:
2. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by defendants.
3. That the Court erred in denying the motions of each of these defendants to dismiss based upon the insufficiency of the indictment to state an of-

fense, which rulings were duly excepted to by defendants.

4. That the Court erred in numerous rulings upon the admissibility of evidence which were highly prejudicial to each defendant and excepted to by defendants, all as appears in the official stenographic reporter's transcript of the proceedings had and taken at the trial.

5. That the Court erred in denying the motions of each of these defendants to dismiss or for a directed verdict of acquittal upon the grounds of the insufficiency of the evidence to sustain a verdict of conviction, which rulings were duly excepted to by defendants.

6. That there is a fatal variance between the charge of the indictment and the proof in this—that the indictment alleges that defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions, in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment of millwork and patterned lumber in interstate commerce and that in so agreeing and engaging defendant unions were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas the proof is to the contrary and diametrically opposed to such allegations of the indictment. [933]

7. That the Court misdirected the jury in mat-

ters of law and in instructing and refusals to instruct the jury, and such errors and rulings were highly prejudicial to each defendant and duly excepted to by defendants, all as appears in the official stenographic reporter's transcript of the proceedings had and taken at the trial and of the charge given by the Court and the proposed instructions submitted and filed by defendants and which are of record in the action.

8. That the verdict is contrary to the evidence.

9. That there is no evidence to sustain the verdict.

10. That there is insufficient evidence to sustain the verdict.

11. That the evidence in the case is as consistent with innocence as with guilt.

12. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to defendants who had made a plea of nolo contendere and by reference to such as pleas of guilt that the Court erred in its rulings and statements concerning such pleas over the objections of defendants and to which they reserved exceptions.

13. That the jury was guilty of misconduct by which a fair, due and impartial consideration of the case has been prevented.

14. That the verdict was decided by means other than a fair expression of opinion on the part of all the jurors.

15. Newly discovered evidence, material to de-

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fendants, which could not, with reasonable diligence have been discovered and produced at the trial.

Said motions will be based upon this moving paper together with points and authorities filed herewith, all records and files in the action and the minutes of the Court and the official stenographic reporter's transcript of the proceedings had and [934] taken at the trial and upon such affidavits or other evidence as may be filed and adduced at the hearing of the motions.

Dated: December 15, 1941.

JOSEPH O. CARSON

JOSEPH O. CARSON, II.

CHARLES H. TUTTLE

THOMAS E. KERWIN

HARRY N. ROUTZOHN

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for Moving Defendants.

Receipt of a copy of the within Motions for New Trial is hereby admitted this 15th day of December, 1941.

WALLACE HOWLAND

TOM. C. CLARK

Attorneys for Plaintiff, U. S. of America

[Endorsed]: Filed Dec. 15, 1941. [935]

[Title of District Court and Cause.]

### MOTIONS IN ARREST OF JUDGMENT

Now come the defendants The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil Ovenberg, Dave Ryan, Charles Roe and W. L. Wilcox and severally and separately move the Court in arrest of judgment and for an order that no judgment be rendered on the verdict of guilty herein as to each of said defendants, upon the following grounds, and for the following reasons, and each of them:

1. That as to the defendant The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and individual defendant members thereof, an immunity from prosecution in the case arose and continues to exist because of the compulsory production of their private books, papers and records before the Grand Jury, all as appears in their plea in abatement on file herein.

2. That as to the defendant The United Brotherhood of Carpenters and Joiners of America, Millmen's Union, No. 550; and individual defendant

members thereof, an immunity from prosecution in the case arose and continues to exist because of [936] the compulsory production of their private books, papers and records before the Grand Jury, all as appears in their plea in abatement on file herein.

3. That as to the defendant The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and individual members thereof, an immunity from prosecution in the case arose and continues to exist because of the compulsory production of their private books, papers and records before the Grand Jury, all as appears in their plea in abatement on file herein.

4. That as to the defendants The United Brotherhood of Carpenters and Joiners of America; Bay District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42 and United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, and as to the individual moving union defendants, each of whom is a member of one or more of such union organizations, an immunity from prosecution in the case arose and continues to exist by reason of the compulsory production of the private papers, books and records of such union organizations at the trial, and the introduction thereof in evidence over the objections of said defendants as stated

and made in the trial, and to the overruling of which objections exceptions were reserved, all as appears from the official stenographic reporter's transcript of the proceedings had and taken at the trial.

5. Additionally as to the defendant Dave Ryan, that he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury over his objections and after a claim of immunity, all as appears in his plea of abatement filed herein, and such defendant continues to assert and claim [937] his immunity herein under the Fourth and Fifth Amendments to the Constitution of the United States and under the Sherman Anti-Trust law; United States Statutes of 1903, Chapter 755, Subdivision 1, 32 Stat. 904, and as otherwise provided by law.

6. Additionally as to the defendant Charles Helbing, that he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury over his objections and after a claim of immunity, all as appears in his plea of abatement filed herein, and such defendant continues to assert and claim his immunity herein under the Fourth and Fifth Amendments to the Constitution of the United States and under the Sherman Anti-Trust law, United States Statutes of 1903, Chapter 755, Subdivision 1, 32 Stat. 904, and as otherwise provided by law.

7. Additionally as to the defendant Walter O'Leary that he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury over his objections and after a claim of immunity, all as appears in his plea of abatement filed herein, and such defendant continues to assert and claim his immunity herein under the Fourth and Fifth Amendments to the Constitution of the United States and under the Sherman Anti-Trust law, United States Statutes of 1903, Chapter 755, Subdivision 1, 32 Stat. 904, and as otherwise provided by law.

8. That the facts stated in the indictment do not constitute a public offense.

9. That the facts alleged in the indictment fail to state a violation of the Sherman Anti-Trust Law:

10. That the indictment is defective in the particulars specified in the demurrers of these defendants.

11. That the indictment on its face contains matters constituting legal justification for all acts charged against these defendants. [938]

Said motions will be based upon this moving paper, together with points and authorities served and filed herewith, and upon all records and files of the Court affecting the case, and upon the minutes of the Court and the official stenographic reporter's transcript of the proceedings had and

taken at the trial, and upon such evidence as may be adduced at the hearing of the motions.

Dated: December 15th, 1941.

JOSEPH O. CARSON  
JOSEPH O. CARSON, II.  
CHARLES H. TUTTLE  
THOMAS E. KERWIN  
HARRY N. ROUTZOHN  
HUGH K. McKEVITT  
JACK M. HOWARD  
Attorneys for Moving Defendants.

Receipt of a copy of the within Motions in Arrest of Judgment is hereby admitted this 15th day of December, 1941.

WALLACE HOWLAND  
TOM C. CLARK

Attorneys for Plaintiff, U. S. of America.

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Thereupon, the following proceedings were taken upon December 20, 1941:

"Mr. Howard: There are two motions pending, your Honor.

"The Court: Very well. I will hear the motions.

"Mr. Howard: In arrest of judgment—

"The Court: I will hear them.

"Mr. Howard: If the Court please, there are written motions on file, first, for a new trial, and, separately, in arrest of judgment. We at this time move the Court on the grounds stated in our writ-

ten motions—I understand this morning was fixed to hear those motions.

“The Court: Yes.

“Mr. Howard: I presume it is not necessary to read you the motions. [939]

“The Court: No.

“Mr. Howard: They will be considered made on the grounds stated in our written motions?

“The Court: Yes.

“Mr. Howard: We have filed points and authorities accompanying those motions. With reference to the Motion for New Trial, I think it can be accurately stated that the crux of the motion, the principal question presented by that motion relates to your Honor’s charge to the jury, and the rulings on the evidence, which in effect held in the case that in view of the fact there was a contract with non-labor groups that the Norris-LaGuardia Act and the Clayton Act were not applicable to the case. I believe that is a fair statement, in view of your Honor’s ruling, and we believe and respectfully urge that the cases are to the contrary, that those statutes have a clear application, certainly as to questions of fact involved for a jury, whereas your Honor’s rulings on admissibility of evidence and the charge to the jury were otherwise. Basically, I would say that is the position summarized with reference to the motion for new trial.

With reference to the motion in arrest of judgment, your Honor during the course of the trial, I believe, suggested that at this time you might

appropriately consider the question that related to those pleas in abatement. I refer generally to the pleas in abatement in behalf of all of the labor defendants which arise from the production of their books, records and papers, and, also, separately as to the defendants Ryan, O'Leary, and Helbing. Your Honor, I believe, has those pleas and the question involved in mind?

"The Court: Yes.

"Mr. Howard: We are urging in connection with our motion in arrest of judgment that as to those three defendants, and all of the defendants separately, that that motion should be arrested [940] on the grounds stated.

"The Court: I think this is the third time I am asked to pass on those pleas, is it not?

"Mr. Howard: I believe that is correct, your Honor.

"The Court: I did suggest that I thought the proper time to make such a plea was at this time.

"Mr. Howard: Yes, your Honor.

"The Court: When you made your motion in arrest of judgment. Therefore, I am not blaming you for urging it now. Is that all?

"Mr. Howard: Basically, that is all, yes.

"The Court: The motions are submitted and the motions are denied. Anything further?

"Mr. Howard: In order that the record be straight, as I understand it, your Honor, you in effect uphold your first ruling on the demurrers which were sustained to the pleas of abatement.

"The Court: Yes.

"Mr. Howard. May we note exceptions to the rulings this morning?

"The Court: Yes, you have an exception to this ruling. Each defendant has an exception to each ruling that I make."

"Mr. Howland: May I reply to one point, your Honor, in connection with the plea in abatement which Mr. Howard referred to, of the labor defendants? In view of the fact that the defendants, by the present motions which have just been denied, reassert their claim of immunity, and by reason of the fact I understand that your Honor has denied them, would it not be correct for your Honor's ruling to be a denial of those pleas rather than a reaffirmance of the demurrers?

"The Court: I have denied the pleas. I have denied the [941] motions. All of the motions made here this morning I have denied. The motion is denied as to each defendant.

"Mr. Howland: Well, I just understood from what your Honor said to Mr. Howard's closing remarks that your ruling as to the plea was in effect reaffirming your previous ruling on the demurrer to the plea.

"The Court: I denied the motion. I think the record is clear.

"Mr. Howard: If there is going to be any question we certainly want to clear it up here and now.

"The Court: Yes. Will there be any question?

"Mr. Howard: Your Honor, during the course

of the trial there was some suggestion that you read the Grand Jury transcript relating to the testimony of those witnesses. If that is to be considered in evidence it should become a part of the record and we would like the privilege also of offering any other proper showing.

"The Court: I don't think that that is necessary at all, Mr. Howard. However, if it would reassure you in any way about the matter I am quite willing to make findings upon the matter.

"Mr. Howard: Findings based on the evidence, your Honor?

"The Court: Well, that would be, I presume, the evidence I read on the motion you submitted; that is the evidence that you offered. I cannot specifically describe it to you now.

"Mr. Howard: If the Court please, if we understand that you are ruling on the question of fact as to immunity here, we would like the record to contain, first, the motion to quash those subpoenas duces tecum, and, second, your Honor's action with reference to the presentment of those witnesses on their claims of immunity, and, third, the Grand Jury proceedings, as a part of this record. Now, if your Honor's ruling is in effect that you are reaffirming the ruling— [942]

"The Court: I am not reaffirming anything. I am denying any motion that has been made here this morning in behalf of every defendant. I am not reaffirming anything. Now, you made your motions and your motions are denied, and you have an exception to the ruling of the Court.

"Mr. Howard: We would ask the privilege, your Honor, in connection with the motions of making a part of this record, then, the ruling which denied our motion to quash subpoenas duces tecum before this Court, and your Honor's ruling on the presentment of contumacious witnesses, being these three defendants, the individuals whom I have named, O'Leary, Ryan, and Helbing, and also the transcript of the Grand Jury showing the testimony that they gave.

"The Court: I have no objection to that.

"Mr. Howard: In other words, all of those things were offered as part of the record in this case, and they are received in evidence.

"The Court: Yes. No objection to that at all." [943]

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[Title of District Court and Cause.]

### DEMAND FOR BILL OF PARTICULARS

Come now the defendants, The United Brotherhood of Carpenters and Joiners of America, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 1956, The United Brotherhood

of Carpenters and Joiners of America Millmen's Union No. 262, The Alameda County Building and Construction Trades Council, J. F. Cambiano, Dave Ryan, James Ricketts, Charles Roe, Charles Helbing, D. J. Edwards, W. P. Kelly, H. Lidley, W. L. Wilcox, Walter O'Leary, M. D. Cicinato, J. P. [944] Sholden, C. H. Irish, George S. Smoot, Otto W. Sammet, and Emil H. Ovenberg, in the above entitled action, and each for itself or himself separately and severally moves the above entitled court for an order requiring and directing the United States Attorney in and for the Northern District of California, Southern Division, and the Special Assistants to the Attorney General of record in the above entitled proceeding, to furnish to each of said defendants a bill of particulars as to each and all of the following matters which do not and each of which does not clearly appear from the indictment herein, in order that each of said defendants may know and be particularly informed in order that they and each of them may prepare for trial, namely:

1. The names and addresses of manufacturers outside of California who have been prevented from shipping manufactured millwork or patterned lumber into the San Francisco Bay Area in interstate commerce by any activity of these defendants;

2. The names and addresses of all manufacturers outside of California desiring to ship manufactured millwork or patterned lumber who operate

entirely Union shops with a lower wage scale than such manufacturers in the San Francisco Bay Area;

3. What affairs, policies and acts of the defendant Unions, or any of them, constitute an offense against the laws of the United States, as alleged in paragraph 22, page 14, part IV of the indictment;

4. What acts constituting a public offense have been done by these defendants and by which defendant and the time and place of each act as charged in paragraph 22, page 14, part IV;

5. What, if any, substantive act has been done by these defendants, or any of them, which violates the Sherman Anti-Trust Act;

6. The time and place of any act and by whom committed which is alleged to constitute an offense, as charged in the [945] indictment;

7. What acts these defendants have authorized or ordered which constitute an offense against the laws of the United States, and the name of the defendant so authorizing or ordering such act;

8. A description of the rules, regulations and policies alleged to have been promulgated by defendant Unions and which constitute a public offense;

9. What relation the observance of the rules, regulations, policies and obligations of defendant

Unions has upon the alleged offenses sought to be charged in the indictment;

10. The time and place that each of these defendants entered the combination or conspiracy attempted to be alleged in the indictment;

11. The time and place of any act and the name of the defendant alleged to have committed it which has unduly or unreasonably or directly restrained interstate trade and commerce;

12. A Particular description of the divers means and methods alleged to have been used by these defendants, or any of them, in paragraph 28, page 18, part VI;

13. What activities defendant Unions agreed to engage in so as to prevent the sale and shipment of millwork and patterned lumber into the San Francisco Bay Area by manufacturers located outside of the State of California;

14. In what respect the agreement referred to in paragraph 27, sub-paragraph (b), page 19, part VI unreasonably affects interstate commerce or is unlawful;

15. What subsequent agreements and understandings have been made and the particulars thereof, as referred to in paragraph 28, sub-paragraph (c), page 19, part VI;

16. How and in what manner defendants prevented the sale and delivery of a carload of millwork and patterned lumber, [946] as alleged in paragraph 28, sub-paragraph (h), page 20, part VI;

17. As to any shipment prevented from being sold or delivered in the San Francisco Bay Area, a description of said shipment, the dates and the names of shippers;

18. The names of any purchasers of millwork or patterned lumber and who have been forced to cancel orders for manufacturers outside of the State of California by reason of anything done by these defendants;

19. The times and places where cars bearing millwork and patterned lumber were prevented from being unloaded by means of pickets or threats to picket, and the names of the manufacturers and consignees involved in such shipments;

20. The names of all manufacturers alleged to have been conspired against and prevented from engaging in interstate commerce;

21. What contracts were made which are referred to in paragraph 35, sub-paragraph (a), page 25, part IX;

22. The names of all persons, firms or corporations upon whom demands are alleged to have been made by defendant Unions that they purchase only from manufacturers acceptable to such Unions.

Said motion will be made upon the grounds that it is in the interest of justice that said particulars be supplied, and in order that these defendants may know the things with which they are charged so that they may prepare for trial, and will be made and based upon the indictment, upon the mat-

ters set forth in this demand and authorities served and filed herewith.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for said defendants.

[947]

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[Title of District Court and Cause.]

**AFFIDAVIT OF CERTAIN DEFENDANTS IN  
SUPPORT OF DEMAND AND MOTION  
FOR BILL OF PARTICULARS.**

State of California,

City and County of San Francisco—ss.

J. F. Cambiano, individually and as a representative of the International Brotherhood of Carpenters and Joiners of America, an unincorporated association, Dave Ryan, individually and as secretary of Bay Counties District Council of Carpenters, James Rickets, Charles Roe, individually and as business representative of The Alameda County Building and Construction Trades Council, Charles Helbing, H. Lidley, W. P. Kelly, D. J. Edwards, individually and as vice-president of the United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, an unincorporated association, W. L. Wilcox, M. D. Cicinato, J. P. Sholden, C. H. Irish, Walter O'Leary, individually and as business representative of The United Brother-

hood of Carpenters [948] and Joiners of America Millmen's Union No. 550, an unincorporated association, George S. Smoot, individually and as president of The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 262, an unincorporated association, Otto W. Sammet and Emil H. Ovenberg, being duly sworn, each for himself and not one for the other, says:

That these affiants who make this affidavit in behalf of themselves individually and also as officers or representatives of certain unincorporated associations, make this affidavit for and in behalf of themselves and for and in behalf of said unincorporated associations; that each affiant and each of said unincorporated associations is a defendant named in the indictment filed in the above entitled proceeding, and each is familiar with said indictment; that said indictment contains general allegations that these defendants have authorized or done acts constituting the alleged offense sought to be charged in said indictment, without specifying said acts, the time, place or nature thereof, which each defendant is charged to have authorized or done; that it appears from the face of said indictment that all of these defendants could not have done, authorized or performed all of the acts therein thus generally alleged against them all; that said indictment is so worded that it gives no information to affiants or any of them of the facts relied upon to show the complicity or relation of each affiant to the various acts or offenses sought to be

alleged in said indictment; that your affiants have been informed by their attorney, Hugh K. McKevitt, and believe the fact to be, and placing their allegations on such information and belief, allege that unless affiants are furnished with a bill of particulars, which particularly and specifically informs them and each of them concerning the matters set forth in their demand for bill of particulars, that they will be unable to prepare and present their defenses, and that in the event affiants [949] are tried on said indictment, they and each of them will be unable to claim prior jeopardy in the event that they or any of them are hereafter charged with any of the alleged offenses attempted to be set forth in said indictment.

J. F. CAMBIANO

DAVE RYAN

CHARLES HELBING

CHARLES ROE

H. LIDLEY

W. P. KELLY

J. P. SHOLDEN

D. J. EDWARDS

W. L. WILCOX

M. D. CICINATO

WALTER O'LEARY

EMIL H. OVENBERG

GEORGE S. SMOOT

OTTO W. SAMMET

C. H. IRISH

JAMES RICKETS

Subscribed and sworn to before me this 28th day of September, 1940.

[Seal] ANTONIO M. COGLIANDRO,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

My Commission expires Dec. 31, 1942. [950]

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On Wednesday, April 24, 1940, the following proceedings were had before Honorable A. F. St. Sure, Judge, in re presentment by the Grand Jury of David H. Ryan, Thomas H. Bennett and Alfred B. Fromm, for refusal to comply with subpoenas duces tecum.

Counsel appearing for the United States, Morris R. Clark, Esq., and Hugh B. Cox, Esq., Special Assistants to the Attorney General; for David H. Ryan, Thomas H. Bennett and Alfred B. Fromm, Joseph O. Carson, Jr., Esq., Hugh K. McKevitt, Esq., and Jack M. Howard, Esq.

The Grand Jury presented such witnesses, who were present in Court, as contumacious for having refused to produce the documents called for in subpoenas, and requested the order of the Court directing said witnesses to produce such documents.

Motions were then made in behalf of said witnesses, Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, to quash, vacate and sup-

press said subpoenas and said motions were heard by stipulation, and thereafter the moving papers on said motions filed in Proceeding No. 2727.

Thereupon, the matter was continued to Friday, April 26, 1940, and said witnesses directed to be present.

On Friday, April 26, 1940, said witnesses being present, the following proceedings were had and taken:

"The Court: In an investigation by the Grand Jury under the anti-trust laws subpoenas duces tecum, pursuant to court order, were directed to Local #550, United Brotherhood of Carpenters and Joiners of America; Local #42 of the same organization; and the Bay District Council of Carpenters. Thomas Bennett, Alfred Fromm, and D. H. Ryan, as officers of the respective organizations, appeared before the Grand Jury, and when requested to produce the records called for by the subpoenas, acting upon [951] advice of counsel, refused to produce the records unless granted immunity by the Government, which was refused. The Grand Jury made oral presentation to the court of the three witnesses as contumacious. Each being present in court with counsel, moved to quash, suppress, and vacate the subpoenas.

It is objected that as each subpoena affects a local union which is unincorporated and the things sought are the private papers of each individual member, no one of whom has any ownership distinct from the other, each is entitled to assert the

constitutional guarantees. Of course, each individual may assert and maintain any constitutional right to which he is entitled; but the act upon which this proceeding is based provides for criminal liability of, 'persons' restraining interstate commerce or creating a monopoly in restraint thereof. The act includes both corporations and associations 'existing under or authorized by the laws of either United States, the laws of any of the territories, the laws of any state, or the laws of any foreign country. Title 15 USCA Sections 1, 2, and 7. There is ample authority supporting the procedure. *Wilson v. United States*, 221 U. S. 361; *United Mine Workers v. Coronado Co.*, 259 U. S. 344; *Brown v. United States*, 276 U. S. 134. Labor unions and their representatives are not exempt from the provisions of the anti-trust laws. Under the circumstances here shown it is clearly their duty to obey the subpoenas of the Grand Jury.

The objection that the subpoenas are too broad and indefinite is without merit. Examination shows them to be sufficiently specific and related to the matters under investigation.

The motions to quash, suppress, and vacate are denied, and the witnesses who are now present in court are hereby directed to appear before the Grand Jury and to produce and present the records called for by the subpoenas. [952]

"Mr. McKevitt: I am not sure whether under the rules we have exceptions saved. However, so there will be no doubt about that, may we be understood to save exceptions in all three matters?

"The Court: Yes.

"Mr. McKevitt: Furthermore, may it please the Court, I wish to note that the records required are supplied under the order of court, and under compulsion in all three matters.

"The Court: What is that?

"Mr. McKevitt: I would like it understood that we are supplying the records under the order of this Court and under compulsion in all three matters.

"The Court: Yes." [953]

In the District Court of the United States  
for the Northern District of California

Southern Division

No. 2727

In the Matter of the Subpoena returnable before the Grand Jury Impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoena was issued out of and under the Seal of said Court on the 11th day of April, 1940, and directed to Bay Counties District Council of Carpenters, D. H. Ryan, Secretary, 200 Guerrero Street, San Francisco, California.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States:

**NOTICE OF MOTION AND MOTION TO  
QUASH, VACATE, AND SUPPRESS SUB-  
POENA.**

Notice is hereby given that D. H. Ryan, and Bay Counties District Council of Carpenters severally and jointly intend to and do hereby move the above entitled Court for an order with [954] respect to the above entitled subpoena, a copy of which subpoena is hereunto annexed as "Exhibit A", and by this reference and annexation made a part hereof, and a copy of which subpoena was delivered to D. H. Ryan on or about the 12th day of April, 1940, as follows:

1. Quashing, suppressing and vacating said subpoena in its entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoena, and each of them, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoena is so broad and indefinite in its terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoena constitute the private papers, property and effects of the individual members of the Bay Coun-

ties District Council of Carpenters and each of them, and are not subject to search and seizure.

3. That your moving parties and each of them, in behalf of themselves and of each individual member of Bay Counties District Council of Carpenters, assert and stand upon their constitutional rights not to be compelled to be witnesses against themselves in a criminal action or proceeding, and assert and claim immunity.

4. That said subpoena calls for the giving of testimony and evidence in addition to the production of things, and violates and is contrary to the provisions of the Fifth Amendment to the Constitution of the United States. [955]

5. That the requirements of the subpoena go further than the production of evidence in that the witnesses are commanded by its terms to testify and give evidence and establish the relationship of the books, records, and documents to the subjects enumerated.

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoena would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice

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of motion, together with the memorandum of points and authorities and the affidavit of D. H. Ryan filed herewith; and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: April 24th, 1940.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for D. H. Ryan and  
Bay Counties District Council  
of Carpenters.

\* \* \*

EXHIBIT "A"

District Court of the United States  
Northern District of California  
Southern Division

The President of the United States of America  
To Bay Counties District Council of Carpen-  
ters, D. H. Ryan, secretary, [956] (Mill-  
men's Union) 200 Guerrero Street, San  
Francisco, California. Greeting:

You and Each of You Are Hereby Commanded,  
That all and singular business and excuses being  
laid aside, you and each of you be and appear in  
your proper person before the United States Dis-  
trict Court for the Northern District of California,  
at the Court Room, in the City and County of San  
Francisco, on the 15th day of April, A. D. 1940, at  
10 o'clock in the forenoon, to Testify the Truth, and

give evidence before the Grand Jury, and you are not to depart the Court without the leave of the Court or of the U. S. Attorney.

[Seal]

[Seal]

and bring with you and produce at the time and place aforesaid:

(1) Books or other documents or records showing the names of the officers, the directors, and the members of Bay Counties District Council of Carpenters during the period from January 1, 1937, to date.

(2) All minute books and other papers, records and documents containing the minutes or other records of proceedings including all motions offered and the action taken thereon at all meetings of (a) members, (b) directors, or (c) committees of Bay Counties District Council of Carpenters from January 1, 1937, to date.

(3) All original contracts or agreements proposed, executed, or in effect (or copies thereof where the originals are not in the possession of Bay Counties District Council of Carpenters) at any time during the period from January 1, 1937, to date and relating to

(a) the requirement that the union label of Local Unions No. 42 and No. 550 of the United Brotherhood of Carpenters and Joiners of America (sometimes known as the Millmen's

Union) be affixed to any millwork [957] sold or distributed in the San Francisco Bay Area;

(b) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of millwork transported into said area from states other than the State of California;

(c) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of the so-called readi-cut or prefabricated type of dwelling house transported into said area from states other than the State of California;

between Bay Counties District Council of Carpenters and (a) Local No. 42, United Brotherhood of Carpenters and Joiners of America, (b) Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, (c) Lumber Products Association, Inc., (d) Cabinet Manufacturers Institute of California, Inc., (e) Wood Products, Inc., and (f) Alameda County Building and Construction Trades Council.

(4) All original letters, telegrams, correspondence, reports, memoranda and other communications (or copies thereof where the originals are not in the possession of Bay Counties District Council of Carpenters) relating to the subjects and passing between the parties set forth in paragraph numbered (3) above during the period from January 1, 1937, to date.

(5) All general ledgers of Bay Counties District Council of [958] Carpenters from January 1, 1937, to date.

(6) All cash disbursement books of Bay Counties District Council of Carpenters from January 1, 1937, to date.

(7) All cash receipt books of Bay Counties District Council of Carpenters from January 1, 1937, to date.



(8) All check books and all cancelled checks of Bay Counties District Council of Carpenters from January 1, 1937, to date. And that you are not to omit, under pain of being adjudged guilty of contempt of said Court.

Witness, the Hon. A. F. St. Sure, Judge of the United States District Court for the Northern District of California, and the seal of the said Court, this 11th day of April, in the year of our Lord, one thousand nine hundred and forty and of the Independence of the United States of America the one hundred and sixty-fourth.

[Seal]

WALTER B. MALING,  
Clerk.

By M. F. VAN BUREN,  
Deputy Clerk. [959]



[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION TO  
QUASH, SUPPRESS AND VACATE SUB-  
POENA DUCES TECUM.**

United States of America,  
State of California,  
City and County of San Francisco—ss.

D. H. Ryan, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting Secretary-Treasurer of Bay Counties District Council of Carpenters; that said Bay Counties District Council of Carpenters is a voluntary association, unincorporated, consisting of various individual members, all of whom are individual workmen practicing the trade of carpenters and joiners, or paid officials or business agents of the various affiliated local unions, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Bay Counties District Council of Carpenters, and D. H. Ryan, Secretary; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part [960] hereof; that said subpoena was served upon your affiant, and pursuant to said subpoena your affiant appeared before the Grand Jury on April 24, 1940, to which time said proceeding had been continued.

That the books, papers, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Bay Counties District Council of Carpenters; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Bay Counties District Council of Carpenters, and requires evidence that said things relate to the subjects purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and its enforcement would seriously impair the business activities and conduct of the affairs of said association; that your affiant, in behalf of himself and in behalf of said Bay Counties District Council of Carpenters, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or

1242. *Lumber Products Assn., Inc., et al.*

unreasonable search and seizure of his person, property and effects.

D. H. RYAN

Subscribed and sworn to before me this 24th day of April, 1940.

[Seal]

ANTONIO M. COBLIANDRO

Notary Public in and for the City and County of San Francisco, State of California.

By Commission expires Dec. 31, 1942. [961].

In the District Court of the United States  
for the Northern District of California

Southern Division

No. 2727

In the Matter of the Subpoenas returnable before the Grand Jury impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoenas were issued out of and under the Seal of said Court and directed to Local Union No. 550, United Brotherhood of Carpenters and Joiners of America.

NOTICE OF MOTION AND MOTION TO  
QUASH, VACATE AND SUPPRESS SUB-  
POENA.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States:

Notice Is Hereby Given that Local Union No. 550, United Brotherhood of Carpenters and Joiners of America and Thomas Bennett, severally and jointly intend to and do hereby move the above entitled Court for an order with respect to the above [962] entitled subpoenas, a copy of one of which subpoenas is hereunder annexed as "Exhibit A," and by this reference and annexation made a part hereof, and a copy of which subpoena was delivered to W. C. O'Leary on or about the 11th day of April, 1940, and an identical subpoena served upon Thomas Bennett on or about April 24, 1940, as follows:

1. Quashing, suppressing and vacating said subpoenas, and each of them, in their entirety.
2. Quashing, suppressing and vacating the paragraphs of said subpoenas, and each of them, which require the production of any books, documents or records purported to be described therein.
3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoenas are, and each is, so broad and indefinite in terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoenas constitute the private papers, property and effects of the individual members of Local Union No. 550, United Brotherhood of Carpenters

and Joiners of America, and each of them, and are not subject to search and seizure.

3. That your moving parties and each of them, in behalf of themselves and each individual member of Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, assert and stand upon their constitutional rights not to be compelled to be witnesses against themselves in a criminal action or proceeding, and assert and claim immunity.

4. That said subpoenas, and each of them, call for the [963] giving of testimony and evidence in addition to the production of things, and violates and are, and each is, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoenas go further than the production of evidence in that the witnesses are commanded by their terms, and the terms of each, to testify and give evidence and establish the relationship of the books, records and documents to the subjects enumerated.

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoenas, or either of them, would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records

and files of the above entitled court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of Thomas Bennett filed herewith, and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: April 24, 1940.

Exhibit "A" is identical in form with Exhibit "A" attached to Notice of Motion and Motion to Quash, Vacate and Suppress filed by W. C. O'Leary, which is hereinafter set forth and which is incorporated by this reference.

JOSEPH O. CARSON, JR.  
HUGH K. McKEVITT  
JACK M. HOWARD

Attorneys for Local Union  
No. 550 United Brotherhood  
of Carpenters and Joiners  
of America and Thomas  
Bennett.

[Endorsed]: Filed Apr. 24, 1940. [964]

[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION TO  
QUASH, SUPPRESS AND VACATE SUB-  
POENAS DUCES TECUM.**

United States of America,  
State of California,  
City and County of San Francisco—ss.

Thomas Bennett, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting Recording Secretary of Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America is a voluntary association, unincorporated, consisting of various individual members, all of [965] whom are individual workmen practicing the trade of carpenters and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part hereof; that said subpoena was served upon W. C. O'Leary, business agent of said local union, and an identical subpoena as to form was served upon your affiant; that pursuant

to said subpoena, your affiant appeared before the Grand Jury on April 24, 1940, to which time said proceeding had been continued;

That the books, papers, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and requires evidence that said things relate to the subject purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and its enforcement would seriously impair the business activities and conduct of the affairs of said association; that your affiant, in behalf of himself and in behalf of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, [966] desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the

1248     *Lumber Products Assn., Inc., et al.*

United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or unreasonable search and seizure of his person, property and effects.

THOMAS BENNETT

Subscribed and sworn to before me this 24th day of April, 1940.

[Seal]

ANTONIO M. COGLIANDRO

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires Dec. 31, 1942.

[Endorsed]: Filed Apr. 24, 1940. [967]

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In the District Court of the United States  
For the Northern District of California  
Southern Division.

No. 2727

In the Matter of the Subpoenas returnable before the Grand Jury impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoenas were issued out of and under the Seal of said Court and directed to Local Union No. 42, United Brotherhood of Carpenters and Joiners of America.

NOTICE OF MOTION AND MOTION TO  
QUASH, VACATE AND SUPPRESS  
SUBPOENA.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States;

Notice is hereby given that Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and Alfred Fromm, severally and jointly intend to and do hereby move the above entitled Court for an order with respect to the above subpoenas, a [968] copy of one of which subpoenas is hereunder annexed as "Exhibit A," and by this reference an annexation made a part hereof, and a copy of which subpoena was delivered to Charles Helbing on or about the 11th day of April, 1940, and an identical subpoena served upon Alfred Fromm on or about April 24, 1940, as follows:

1. Quashing, suppressing and vacating said subpoenas and each of them, in their entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoenas, and each of them, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoenas, are and each is, so broad and indefinite in terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoenas constitute the private papers, property and effects of the individual members of the Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and each of them and are not subject to search and seizure.

3. That your moving parties, and each of them, in behalf of themselves, and each individual member of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, assert and stand upon their constitutional rights not to be compelled to be witnesses against themselves in a criminal action or proceeding, and assert and claim immunity.

4. That said subpoenas, and each of them, call for the giving of testimony and evidence in addition to the production of [969] things, and violates and are, and each is, contrary to the provision of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoenas go further than the production of evidence in that the witnesses are commanded by their terms, and the terms of each, to testify and give evidence and establish the relationship of the books, records, and documents to the subjects enumerated.

6. That there is no showing of materiality or

pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoenas, or either of them, would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of Alfred Fromm filed herewith, and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: April 24, 1940.

Exhibit "A" is identical with Exhibit "A" attached to Notice of Motion and Motion to Quash, Vacate and Suppress Subpoena filed by Charles Helbing, which is hereinafter set forth and which is incorporated by this reference.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for Local Union  
No. 42, United Brotherhood  
of Carpenters and  
Joiners of America and  
Alfred Fromm.

[Endorsed]: Filed Apr. 24, 1940. [970]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION TO  
QUASH, SUPPRESS AND VACATE  
SUBPOENAS DUCES TECUM

United States of America,

State of California,

City and County of ~~San Francisco~~ ss.

Alfred Fromm, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting Recording Secretary of Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that said Local Union No. 42 of the United Brotherhood [971] of Carpenters and Joiners of America is a voluntary association, unincorporated, consisting of various individual members, all of whom are individual workmen practicing the trade of carpenters and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part hereof; that said subpoena was served upon Charles Helbing, business agent of said local union, and an identical subpoena as to form was served upon your affiant; that pursuant

to said subpoena your affiant appeared before the Grand Jury on April 24, 1940, to which time said proceeding had been continued.

That the papers, books, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, and requires evidence that said things relate to the subject purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and its enforcement would seriously impair the business activities and conduct of the affairs of said association; that your affiant, in behalf of himself and in behalf of said Local [972] Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitu-

tion of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or unreasonable search and seizure of his person, property and effects.

ALFRED FROMM

Subscribed and sworn to before me this 24th day of April, 1940.

(Seal) ANTONIO M. COGLIANDRO

Notary Public in and for the City and County of San Francisco, State of California. My commission expires Dec. 31, 1942. [973]

On Monday, May 13, 1940, the following proceedings were had and taken before Honorable A. F. St. Sure, Judge, on the presentment of W. C. O'Leary and Charles Helbing, to the Court by the Grand Jury, and hearing of motion to squash and motion to suppress subpoena.

Counsel appearing for the Government, Morris R. Clark, Esq., Special Assistant to the Attorney General; for Charles Helbing and W. C. O'Leary, Hugh K. McKevitt, Esq., and Jack M. Howard, Esq.

"The Court: I understand, Mr. McKevitt, you wish to file a motion to squash and suppress subpoenas that have been issued in the matter of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America?

"Mr. McKevitt: That is correct, and that ap-

plication goes to W. C. O'Leary, as well as to Charles Helbing, those two men named in our application. We would like to make the motion on the ground, or upon all the grounds stated in the notice, and based upon the affidavits which we supplied the Court, and copies of which we gave to Mr. Clark, your Honor, and also on points and authorities which we served and filed. Incidentally, the points and authorities are the same as those heretofore served in a similar matter, and which were argued before the Court.

"The Court: Yes. I presume the motion may be submitted at this time?

"Mr. McKevitt: It may.

"The Court: The motion is denied.

"Mr. McKevitt: May it please the Court, I understand, according to the rules, that we have an exception saved, but in a matter such as this it may be understood, and, furthermore, I would like it understood that these men are testifying pursuant to an order made by this Court and under compulsion.

"The Court: Are they present in court now? [974]

"Mr. McKevitt: The men are here, yes, your Honor.

"The Court: Mr. Helbing.

"Mr. McKevitt. Mr. O'Leary and Mr. Helbing.

"The Court: Charles Helbing and W. C. O'Leary. Gentlemen, I direct you to appear before the Grand Jury and to produce the documents

named in the subpoena which was attached to the notice of motion to quash here, and also to give your testimony, and, of course, it follows that if you do not do that you will be presented here for contempt and be subject to punishment for contempt of court. Is there anything further?

"Mr. Clark: I ask, your Honor, these gentlemen be directed to appear here before the Grand Jury on next Friday morning.

"The Court: Yes. I direct you, Mr. O'Leary and Mr. Helbing, to appear before the Grand Jury, in the Grand Jury room in this building, on next Friday morning at ten o'clock.

"Mr. O'Leary: Yes.

"Mr. Helbing: Yes.

"Mr. Clark: Your Honor, the Grand Jury had voted to present these gentlemen this morning for contempt, but in view of your Honor's order I do not presume that will be necessary.

"The Court: I hardly think so.

"Mr. McKevitt: Well, it might be understood they are present and your Honor has made—

"The Court: I have directed them and if they do not appear and give their testimony on next Friday morning they will be subject to contempt.

"Mr. McKevitt: I think that is clear.

"The Court: Don't you think that that is satisfactory?

"Mr. McKevitt: I think so.

"The Court: As I understand it from you, Mr. McKevitt and Mr. Howard, these gentlemen will

be presented to the Grand [975] Jury with the documents and will give their testimony on next Friday morning at ten o'clock?

"Mr. McKevitt: That is correct.

"Mr. Howard: I believe they had already declined to testify.

"Mr. Clark: The circumstances are these, your Honor, that the documents have been presented to the Grand Jury and the Grand Jury wishes to question, or to make certain investigations with regard to the contents of these documents, and to have Messrs. Helbing and O'Leary testify with regard to these documents, and Mr. O'Leary and Mr. Helbing appeared before the Grand Jury this morning, and after certain preliminary questions with regard to the documents and records produced refused to testify any further, and for that reason the Grand Jury felt they should be presented to the Court as contumacious.

"The Court: I don't think there can be any misunderstanding.

"Mr. McKevitt: I don't think so.

"The Court: It is understood these men are giving their testimony before the Grand Jury upon the direction of the Court. If they fail to do that they will be presented to the Court by the Grand Jury for punishment for contempt.

"Mr. McKevitt: That is correct.

[Endorsed]: Filed April 24, 1940. [976]

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO  
QUASH, VACATE AND SUPPRESS  
SUBPOENA.

To the United States of America and Frank Hennessey, Esq., United States Attorney for the Northern District of California, and to Morris R. Clark, Esq., Special Assistant to the Attorney General of the United States:

Notice is hereby given that W. C. O'Leary intends to and does hereby move the above entitled Court for an order with respect to the above entitled subpoena, a copy of one of which is hereunder annexed as "Exhibit A," and by this reference and annexation made a part hereof, and a copy of which subpoena was [977] served upon W. C. O'Leary on or about the 11th day of April, 1940, as follows:

1. Quashing, suppressing and vacating said subpoena in its entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoena, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoena is so broad and indefinite

in terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoena constitute the private papers, property, and effects of the individual members of Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, and each of them, and are not subject to search and seizure.

3. That your moving party in behalf of himself and each individual member of Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, asserts and stands upon the constitutional right not be compelled to be a witness against himself in a criminal action or proceeding, and asserts and claims immunity.

4. That said subpoena calls for the giving of testimony and evidence in addition to the production of things, and violates and is contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoena go further than the production of evidence in that the witness is commanded [978], by its terms to testify and give evidence and establish the relationship of the books, records and documents to the subjects enumerated.

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoena would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States."

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of W. C. O'Leary filed herewith, and upon such additional evidence as may be adduced at the hearing of the motion.

: - Dated: May 13, 1940.

JOSEPH O. CARSON, JR.

HUGH K. McKEVITT

JACK M. HOWARD

Attorneys for W. C. O'Leary [979]

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EXHIBIT "A"

District Court of the United States

Northern District of California

Southern Division

The President of the United States of America  
To Local No. 550, United Brotherhood of Carpen-  
ters and Joiners of America (Millmen's Union)  
2111 Webster Street, Oakland, California.

Greeting:

You and Each of You Are Hereby Commanded,  
That all and singular business and excuses being

laid aside, you and each of you, be and appear in your proper person before the United States District Court, for the Northern District of California, at the Court Room, in the City and County of San Francisco, on the 15th day of April, A. D. 1940, at 10 o'clock in the forenoon, to Testify the Truth, and give evidence before the Grand Jury, and you are not to depart the Court without the leave of the Court or of the U. S. Attorney.

(Seal)

(Seal)

and bring with you and produce at the time and place aforesaid:

(1) Books or other documents or records showing the names of the officers, the directors, and the members of Local No. 550, United Brotherhood of Carpenters and Joiners of America, during the period from January 1, 1937, to date.

(2) All minute books and other papers, records, and documents containing the minutes or other records of proceedings including all motions offered and the action taken thereon at all meetings of (a) members, (b) directors, or (c) committees of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(3) All original contracts or agreements proposed, [1980], executed, or in effect (or copies thereof where the originals are not in the possession of Local No. 550, United Brotherhood of Carpenters and Joiners of America) at any time during the period from January 1, 1937, to date and relating to

(a) the requirement that the union label of

Local Unions No. 42 and No. 550 of the United Brotherhood of Carpenters and Joiners of America (sometimes known as the Millmen's Union) be affixed to any millwork sold or distributed in the San Francisco Bay Area;

(b) the prohibition and restriction of the distribution and sale in the San Francisco Bay area of millwork transported into said area from states other than the State of California;

(c) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of the so-called readi-cut or prefabricated type of dwelling house transported into said area from states other than the State of California;

between Local No. 550, United Brotherhood of Carpenters and Joiners of America and (a) Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, (b) Lumber Products Association, Inc., (c) Bay Counties District Council of Carpenters, (d) Cabinet Manufacturers Institute of California, Inc., (e) Wood Products, Inc., and (f) Alameda County Building and Construction Trades Council.

(4) All original letters, telegrams, correspondence, reports, memoranda and other communications (or copies thereof where the originals are not in the possession of Local No. 550, United Brotherhood of Carpenters and Joiners of America) relating to the subjects and passing between the parties

set forth in paragraph numbered (3) above during the period from January 1, 1937, to date. [981]

(5) All general ledgers of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(6) All cash disbursement books of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(7) All cash receipt books of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

(8) All check books and all cancelled checks of Local No. 550, United Brotherhood of Carpenters and Joiners of America, from January 1, 1937, to date.

And this you are not to omit, under pain of being adjudged guilty of a contempt of said Court.

Witness, the Hon. A. F. St. Sure, Judge of the United States District Court for the Northern District of California, and the seal of the said Court, this 11th day of April, in the year of our Lord, one thousand nine hundred and forty and the Independence of the United States of America the one hundred and sixty-fourth.

(Seal)

WALTER B. MALING,  
Clerk.

By M. E. VAN BUREN,  
Deputy Clerk. [982]

[Title of District Court and Cause.]

**AFFIDAVIT IN SUPPORT OF MOTION TO  
QUASH, SUPPRESS AND VACATE SUB-  
POENA DUCES TECUM.**

United States of America,

State of California,

City and County of San Francisco—ss.

W. C. O'Leary, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting business representative of Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America is a voluntary association, unincorporated, consisting of various individual members, all of whom are individual workmen practicing the trade of carpenters and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above-entitled Court directed to Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part hereof; that said subpoena was served upon affiant; that pursuant to said subpoena, your affiant appeared before the Grand Jury on May 13th, [1983] 1940, to which time said proceeding had been continued;

That the books, papers, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and requires evidence that said things relate to the subjects purportedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described, and testimony relating thereto; that your affiant, in behalf of himself and in behalf of said Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an un-

lawful search and seizure or unreasonable search and seizure of his person, property and effects.

W. C. O'LEARY

Subscribed and sworn to before me this 13 day of May, 1940.

AMY B. TOWNSEND,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires October 29, 1942. [984]

In the District Court of the United States for the Northern District of California, Southern Division.

No. 2734

In the matter of the Subpoena returnable before the Grand Jury impanelled by the Honorable A. F. St. Sure, Judge of the above entitled Court, which Subpoena was issued out of and under the Seal of said Court and directed to Local Union No. 42, United Brotherhood of Carpenters and Joiners of America.

**NOTICE OF MOTION AND MOTION TO QUASH, VACATE AND SUPPRESS SUBPOENA.**

To the United States of America, and Frank Hennessy, Esq., United States Attorney for the Northern District of California, and to Morris

R. Clark, Esq., Special Assistant to the Attorney General of the United States:

Notice is hereby given that Charles Helbing intends to and does hereby move the above entitled Court for an order with respect to the above subpoena, a copy of which subpoena is hereunder annexed and "Exhibit A" and by this reference and annexation made a part hereof, and a copy of which subpoena was served upon Charles Helbing on or about the 11th day of April, 1940, as follows: [985]

1. Quashing, suppressing and vacating said subpoena in its entirety.

2. Quashing, suppressing and vacating the paragraphs of said subpoena, which require the production of any books, documents or records purported to be described therein.

3. For such other additional or different relief as may be meet and proper in the premises.

Said motion will be and is hereby made upon the following grounds and each of them:

1. That said subpoena is so broad and indefinite in its terms as to be unreasonable, oppressive and invalid.

2. That the books, documents, records and things purportedly described in and called for by said subpoena constitute the private papers, property and effects of the individual members of the Local Union No. 42, United Brotherhood of Carpenters and Joiners of America, and each of them, and are not subject to search and seizure.

3. That your moving party, in behalf of himself, and each individual member of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America asserts and stands upon the constitutional right not to be compelled to be a witness against himself in a criminal action or proceeding, and asserts and claims immunity.

4. That said subpoena, calls for the giving of testimony and evidence in addition to the production of things, and violates and is contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

5. That the requirements of the subpoena go further than the production of evidence in that the witness is commanded by its terms to testify and give evidence and establish the relationship of the books, records and documents to the subjects enumerated. [986]

6. That there is no showing of materiality or pertinence of the documents, records or things purportedly described nor any sufficient identification of such documents, records or things.

7. That the enforcement of the subpoena would constitute an unlawful search and seizure contrary to the Fourth Amendment to the Constitution of the United States.

The motion will be and is based on all records and files of the above entitled Court relating to the Grand Jury investigation and upon this notice of motion, together with the memorandum of points and authorities and the affidavit of Charles Helbing,

filed herein, and upon such additional evidence as may be adduced at the hearing of the motion.

Dated: May 13th, 1940.

**JOSEPH O. CARSON, JR.**

**HUGH K. McKEVITT**

**JACK M. HOWARD**

Attorneys for Charles Helbing.

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**EXHIBIT "A"**

**District Court of the United States**

**Northern District of California**

**Southern Division**

**The President of the United States of America  
To Local No. 42, United Brotherhood of Carpenters  
and Joiners of America (Millmen's Union)**

**200 Guerrero Street**

**San Francisco, California. Greeting:**

**You and Each of You Are Hereby Commanded,  
That all and singular business and excuses being  
laid aside, you and each of you be and appear in  
your proper person before the United States [987]  
District Court for the Northern District of Cali-  
fornia, at the Court Room, in the City and County  
of San Francisco, on the 15th day of April, A. D.  
1940, at 10 o'clock in the forenoon, to Testify the  
Truth, and give evidence before the Grand Jury,  
and you are not to depart the Court without the  
leave of the Court or of the U. S. Attorney.**

**(Seal)**

**(Seal)**

and bring with you and produce at the time and place aforesaid:

(1) Books or other documents or records showing the names of the officers, the directors, and the members of Local No. 42, United Brotherhood of Carpenters and Joiners of America during the period from January 1, 1937, to date.

(2) All minute books and other papers, records, and documents containing the minutes or other records of proceedings including all motions offered and the action taken thereon at all meetings of (a) members, (b) directors, or (c) committees of Local No. 42, United Brotherhood of Carpenters, and Joiners of America from January 1, 1937, to date.

(3) All original contracts, or agreements proposed, executed, or in effect (or copies thereof where the originals are not in the possession of Local No. 42, United Brotherhood of Carpenters and Joiners of America) at any time during the period from January 1, 1937, to date and relating to

- (a) the requirement that the union label of Local Unions No. 42 and No. 550 of the United Brotherhood of Carpenters and Joiners of America (sometimes known as the Millmen's Union) be affixed to any millwork sold or distributed in the San Francisco Bay Area;
- (b) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of millwork transported into said area from states other than the State of California; [988]

(c) the prohibition and restriction of the distribution and sale in the San Francisco Bay Area of the so-called ready-cut or prefabricated type of dwelling house transported into said area from states other than the State of California;

between Local No. 42, United Brotherhood of Carpenters and Joiners of America and (a) Local Union No. 550 of the United Brotherhood of Carpenters and Joiners of America, (b) Bay Counties District Council of Carpenters, (c) Lumber Products Association, Inc., (d) Cabinet Manufacturers Institute of California, Inc., (e) Wood Products, Inc., and (f) Alameda County Building and Construction Trades Council.

(4) All original letters, telegrams, correspondence, reports, memoranda and other communications (or copies thereof where the originals are not in the possession of Local No. 42, United Brotherhood of Carpenters and Joiners of America) relating to the subjects and passing between the parties set forth in paragraph numbered (3) above during the period from January 1, 1937, to date.

(5) All general ledgers of Local No. 42, United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

(6) All cash disbursement books of Local No. 42, United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

(7) All cash receipt books of Local No. 42,

United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

(8) All check books and all cancelled checks of Local No. 42, United Brotherhood of Carpenters and Joiners of America from January 1, 1937, to date.

And this you are not to omit, under pain of being adjudged guilty of a contempt of said court.

Witness, the Hon. A. F. St. Sure, Judge of the United [989] States District Court for the Northern District of California, and the seal of the said Court, this 11th day of April, in the year of our Lord, one thousand nine hundred and forty and of the Independence of the United States of America the one hundred and sixty-fourth.

WALTER B. MALING,

Clerk.

(Seal)

By M. F. VAN BUREN,

Deputy Clerk. [990]

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[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION TO  
QUASH, SUPPRESS AND VACATE SUB-  
POENA DUCES TECUM.

United States of America,

State of California,

City and County of San Francisco—ss.

Charles Helbing, being first duly sworn, deposes and says:

That he is a citizen of the United States and is the duly qualified and acting business representative of Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America is a voluntary association, unincorporated, consisting of various individual members, all of whom are individual workmen practicing the trade of carpenters and joiners, and none of whom is a corporation.

That on the 11th day of April, 1940, a subpoena duces tecum was issued out of the above entitled Court directed to Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that a copy thereof is annexed as an exhibit to the motion filed herewith and by this reference is made a part hereof; that said subpoena was served upon affiant; that pursuant to said subpoena your affiant appeared before the Grand Jury on May 13th, 1940, to which time said proceeding had been continued;

That the papers, books, records and other documents purportedly described in said subpoena, and all things called for by said subpoena, are the papers, records and property of the individual members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America; that the production of the things called for in said subpoena is tantamount to a general examination of the affairs of your affiant and those of his fellow members of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of

America, and require evidence that said things relate to the subject pur- [991] portedly described in said subpoena; that the effect of said subpoena is to constitute a fishing expedition without specification of the evidence desired or any showing of its materiality or pertinency; that said subpoena purports to require the determination by the party subpoenaed of all matters "related to" the subjects therein purportedly described and testimony relating thereto; that your affiant, in behalf of himself and in behalf of said Local Union No. 42 of the United Brotherhood of Carpenters and Joiners of America, and each individual member thereof, desires to assert all existing constitutional guarantees and rights under Amendments 4 and 5 of the Constitution of the United States, including the rights of a person not to be compelled to be a witness against himself in a criminal proceeding and against self incrimination, and the rights to be secure against an unlawful search and seizure or unreasonable search and seizure of his person, property and effects.

CHARLES HELBING.

Subscribed and sworn to before me this 13th day of May, 1940.

AMY B. TOWNSEND,

Notary Public in and for the  
City and County of San  
Francisco, State of Cali-  
fornia.

My commission expires October 29, 1942. [992]

From the Reporter's transcript of the Grand Jury which returned the indictment, showing proceedings taken on Wednesday, April 24, 1940, ten o'clock, A. M., relative to the defendant David H. Ryan:

Mr. Clark: Call Mr. Ryan.

DAVID H. RYAN,

Called as a witness; (previously sworn)

Mr. Clark: Q. Mr. Ryan, I believe you are the Secretary or President of the Bay District Council of Carpenters? A. Secretary-Treasurer.

Q. And in your capacity as that officer of the Bay Counties District Council of Carpenters, do you have custody of the records of that organization? A. I have.

Q. Were you ever served with a subpoena issuing from the United States District Court, directing you to produce certain documents and records more specifically named and described in that subpoena before this Grand Jury?

A. I desire to read a statement.

Q. No. Answer the question please, if you will. I simply asked you if you were served with a subpoena calling for the production of those documents? A. I was, yes.

Q. Now, in response to that subpoena, have you produced those documents here this morning? Now, if you want to read your statement, you may at this time.

The Witness: I have them with me, but I desire to read a statement.

(Testimony of David H. Ryan.)

Mr. Clark: All right. If it is satisfactory to the members of the Grand Jury, it is satisfactory to the Government that you read the statement.

The Witness (Reading): "I am here under compulsion of a subpoena since the claim may be made and indeed has been made, that I may be involved in alleged offenses. I assert my [993] constitutional right not to be compelled in a criminal action to be a witness against myself. I am advised by counsel that I can be denied that right only if I am offered immunity from prosecution for or on account of any transaction, matters or things concerning which I may testify or produce evidence. I therefore elect to stand on my aforesaid constitutional rights unless it be stated on the record that the government elects to grant me immunity.

"I am advised by counsel that inasmuch as the Bay Counties District Council of the United Brotherhood of Carpenters and Joiners of America is an unincorporated voluntary association of individuals, the records of said Council, in so far as they exist, are the private notes and papers of the various members of the Council, and therefore are not subject to subpoena under a constitutional guaranty against unreasonable search and seizure and against an individual being required to produce evidence against himself."

Mr. Clark: Q. Now, Mr. Ryan, you said that you have been so advised by counsel.

The Witness: The statement so says.

Q. Might I ask, Mr. Ryan, if that statement you

(Testimony of David H. Ryan.)

have just made was prepared by you or by your counsel?"

A. I do not care to answer that.

Q. Might I inquire, Mr. Ryan, who your counsel is? A. I refuse to answer that.

Q. You have just refused to answer two questions that I asked you. Might I ask upon what grounds you base that refusal?

A. Well, I desire to read a second statement in relation to my rights as an individual, if I may. (Reading):

"I am here pursuant to the direction of a subpoena which states that inquiry is being made as to alleged offenses against the anti-trust laws of the United States. I am advised that [994] claim is or may be made that I am or may be involved in the commission of such alleged offenses. I assert the right guaranteed me by the Constitution of the United States not to be compelled in a criminal action to be a witness against myself. I am advised by counsel that under the statutes of the United States I can be denied my right under this constitutional guaranty only if I am offered an immunity from prosecution for or on account of any transaction, matter or thing concerning which I may testify or produce evidence. I therefore choose to stand upon my aforesaid constitutional rights, unless I am informed on the record that the United States elects to afford me immunity as aforesaid."

Mr. Clark: Q. Now, Mr. Ryan, would you read the first sentence of that statement again?

(Testimony of David H. Ryan.)

The Witness (Reading): "I am here pursuant to the direction of a subpoena which states that inquiry is being made as to alleged offenses against the anti-trust laws of the United States."

Mr. Clark: Q. Now, Mr. Ryan, have you examined the subpoena that was served on you?

A. I am going to refuse to answer any further questions.

Mr. Clark: Well, for the purpose of the record, Mr. Reporter, I would like to say that the Government refuses to grant Mr. Ryan immunity, and for the purpose of the record I would like to make the statement that the subpoena speaks for itself, and that the subpoena directed to the Bay Counties District Council of Carpenters makes no mention that the Bay Counties District Council of Carpenters, or Mr. Ryan as Secretary thereof, is being investigated or subject to any criminal action on the part of the United States in connection with any offenses or alleged offenses under the Anti-Trust Laws of the United States.

Mr. Foreman: I would suggest that Mr. Ryan be excused and asked to wait in the witness room pending the pleasure of the [995] grand jury.

The Foreman: You are excused temporarily and if you will wait for us in the witness room, Mr. Ryan.

The Witness: I will wait.

(The witness was temporarily excused and left the room.)

From the Grand Jury proceedings of Monday, May  
13, 1940, ten o'clock, A. M.:

DAVID H. RYAN,

called as a Witness.

The Foreman: You do solemnly swear that you will keep secret the testimony you are about to give before this Grand Jury, and you will testify to the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Ryan: I do.

Mr. Clark: Q. You have been sworn heretofore and you have testified?

A. Yes, I have, Mr. Clark.

Q. Now, Mr. Ryan, before I start my line of questioning, the other two gentlemen who have been here have indicated that they wish to stand on their constitutional rights and refuse to answer questions. Now, is it your intention to stand on your constitutional rights and claim the privilege given you, or not?

A. I desire to make a statement in relation to the matter, yes. I want it understood, and the record to show, that I am here under the compulsion of the subpoena previously served upon me, and the order of the Court requiring me to testify, and I am testifying and giving evidence only by reason thereof, and not otherwise; that in testifying, or giving evidence, I am not waiving any constitutional rights or guarantees, but on the contrary that I continue to assert such rights to claim all immunity existing

(Testimony of David H. Ryan.)

under the laws of the United States for myself, and jointly [996] and separately for the Association to which said subpoena is directed, and for each individual member thereof.

Mr. Clark: For the sake of the record, Mr. Reporter, let it be shown that the Government refuses to grant Mr. Ryan immunity by virtue of any testimony he may give here with regard to the documents that will be presented to him for his examination.

Q. Mr. Ryan, I hand you a document dated "San Francisco, California, September 21, 1936," which is signed by the United Brotherhood of Joiners and Carpenters of America, Millmen's Union No. 42 and 550, and is also signed by the Bay Counties District Council of Carpenters by D. H. Ryan. I hand that to you and ask you if that is your signature.

A. Yes, that is my signature.

Q. Do you recall the circumstances under which that contract was negotiated; that is, the contract of September 21, 1936?

A. Our agreements with the employer signatories to this agreement, as well as all other agreements, are negotiated by agreements with the employer signatories to this agreement, as well as all other agreements, are negotiated through conference committees selected by the parties to the agreement, who meet in conference and agree to the terms and stipulations of the agreement, and in some instances where certain questions can't be agreed to, submit the points in dispute for arbitration.

(Testimony of David H. Ryan.)

Q. Now, in connection with the contract that I have just handed you, Government's Exhibit No. 288, did you personally sit in at these negotiations?

A. Yes.

Q. Now, I notice that the contract is signed by Locals 42 and 550 of the United Brotherhood of Joiners and Carpenters of America. Will you tell the Grand Jury what relation exists between the Bay Counties District Council of Carpenters, who is a signatory here, and Locals 42 and 550?

A. The law in the constitution of the United Brotherhood of Carpenters and Joiners of [997] America requires each, or all local unions chartered by it in a city, or a locality, where there are two or more local unions that will form a central body known as a district council; and to affiliate with a district council. The district council so formed is chartered, too, by the Brotherhood of Carpenters, and is referred to, generally speaking, as the parent body in that district. That is the relationship existing between the District Council of Carpenters and the Local Unions of Carpenters in any district.

Q. Now, how does it happen, Mr. Ryan, that the Bay Counties District Council of Carpenters appears as a signatory to this agreement?

A. It is customary for the Bay Counties District Council to approve all agreements negotiated by Local Unions affiliated with that council. They have to later on be approved by the General Office of the United Brotherhood, also.

(Testimony of David H. Ryan.)

Q. Now, you say it is customary for all agreements between Local Unions to be approved by the Bay District Council of Carpenters. Is it not a fact that it is obligatory for them to be so approved?

A. Well, I cannot recall the exact wording, but I don't know of any instances where it has not been done.

Q. To the best of your knowledge, it is done on all occasions?

A. Yes, to the best of my knowledge it is done in all cases where unions are affiliated with the council.

Q. After these agreements have been negotiated and have been signed by the representative locals involved and the Bay Counties District Council of Carpenters, then what is the next procedure?

A. The agreement is submitted to the General Office of the United Brotherhood of Joiners and Carpenters of America at Indianapolis.

Q. At Indianapolis, and Mr. Hutchison is President of the Organization, is that correct?

A. William L. Hutchison is President.

Q. Is that a customary procedure, or is it an obligatory procedure?

A. That is mandatory.

[998]

Q. That is mandatory?

A. That is—well, I don't want—that is mandatory.

Q. Do you know whether those agreements are

(Testimony of David H. Ryan.)

occasionally sent on by mail to the General Office?

A. Sure, yes.

Q. Does a letter of transmittal accompany those agreements?

A. That is the usual procedure, yes.

Q. When they are returned does a letter of transmittal accompany the returned document from the General Office at Indianapolis?

A. That is true in most cases.

Q. When they are returned, are they returned to the respective locals, or are they returned to the Bay Counties District Council of Carpenters?

A. They are usually returned to the Bay Counties District Council of Carpenters.

Q. Mr. Ryan, an examination of the correspondence submitted here by the Bay Counties District Council of Carpenters fails to disclose either a letter of transmittal from the Bay Counties District Council of Carpenters to the General Office in Indianapolis, or a return letter of transmittal from the General Office in Indianapolis to the Bay Counties District Council of Carpenters. Can you explain the absence of those two letters if present from the documents submitted here for the inspection of the Grand Jury?

A. In relation to this agreement?

Q. To this agreement.

A. Well, I can't recall now whether such letters were sent or received. Off the record, I am not familiar with your procedure, how far I am

(Testimony of David H. Ryan.)

allowed to go to amplify my remarks, but if I may be permitted—

Q. Certainly.

A. The General Office of the Brotherhood has what is referred to and called General Representatives of the General Office throughout the United States. There are two of them at the present time in California.

Q. Will you state their names?

A. J. F. Cambiano is one representative of the General President, and Don Cameron is another. [999] It sometimes occurs that in the negotiating of agreements, or the consummation of the agreements, correspondence, or telephones, or wires are transmitted back and forth in regard to it by his personal representative. Now, that is not always the case. I cannot recall at the present time just what transpired at this particular time.

Q. Now, referring you to the signatory page in Government's Exhibit No. 288, I will ask you if there is anything on that document to indicate it is approved either by the General Office in Indianapolis or by any representative of the General Office here in California?

A. Are you referring to this?

Q. Yes.

A. I don't know whether this particular section or paragraph of the agreement was referred to any representative of the General Office, but it is my opinion that it was not. This deals with the

(Testimony of David H. Ryan.)

determination of what work was to be completed under the one scale and what work would come under the other scale. That would be a matter which the General Office presumably would not be consulted upon.

Q. So it would be your opinion that that is a document that would not result in consultation with the general office?

A. I don't recall at any time of submitting a matter of that kind to the general office where say an increase of wages is negotiated under a new agreement. It is necessary to stipulate upon what work that new agreement becomes effective. It is customary that work contracted for, or work upon which bids have been submitted and accepted at the lower rate shall be completed and finished at that rate. The purpose of that particular clause is on the same committee set-up to determine the rate on the particular jobs in question.

Q. Would you read paragraph XVI. of that agreement to the grand jury, Mr. Ryan?

A. Read this aloud?

Q. Yes, read it aloud.

A. "In the interests of standardization of rates of wages and working conditions, it is agreed that no [1000] material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills, or Cabinet Shops, or their distributors that do not conform to the rates of wage and work-

(Testimony of David H. Ryan.)

ing conditions of this agreement. The purchase of and the working of the following products is excepted," listing the excepted material. That is quite familiar to me, Mr. Clark.

Q. Now, I hand you herewith a document marked Government's Exhibit 279, which is dated August 10, 1939, and ask you to state to the best of your knowledge what that document is.

A. "It is understood between the Company and the Union that this section is being included with the complete understanding that in this, and further agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside the six counties involved in this agreement. In general, such competition is as listed in Section No. 20."

Q. Well, I was not particularly concerned with your reading that paragraph, Mr. Ryan. Is this the present working agreement between Local 550—first I will ask you, is that your signature to the document there?

A. That is my signature, yes.

Q. Will you state to the best of your knowledge what that document is?

A. This is an agreement entered into between the Lumber Products Association, Incorporated, and Millmen's Union 42 and 550, District Council of Carpenters.

Q. Did you sit in on the negotiations leading up to the signing of that agreement?

(Testimony of David H. Ryan.)

A. I did. May I amplify my remarks? In both of these agreements just submitted, the section I read there, the General Office refused to endorse it. That agreement was never perfected and approved by the General Office.

Q. Referring to this agreement?

A. The one I read just previous to this, in which I read the section. General President [1001] Hutchison came out here, himself.

The Foreman: So then it is possible, Mr. Helbing, that even after the District Council—

The Witness: Mr. Ryan.

The Foreman: I beg your pardon, Mr. Ryan. It is possible even after the District Council has approved an agreement that the General Office might still refuse its consent?

A. It is not consummated unless the General Office agrees to it. It may mean a telephonic conversation, or mean the signature of a witness, and then they sometimes take the matter up.

Mr. Clark: Q. Well, do I understand you to say, Mr. Ryan, that this agreement, Government's Exhibit 288, from which you read this clause, was never consummated, never became effective?

A. Is that the last one?

Q. That was the last from which you read Section 16.

A. This was not approved by the General Office.

Q. Well, that was not my question. I asked

(Testimony of David H. Ryan.)

you whether or not it was ever effective, and whether Locals 42 and 550 ever worked under the terms of that agreement.

A. In answer to that may I say this: Yes; this agreement, those clauses arose out of an arbitration award arbitrating questions in dispute that could not be agreed in conference between the planing mill owners in San Francisco, the cabinet manufacturers, and the planing mill owners in Alameda County. When the award was handed down by Judge Walter Perry Johnson, the arbitrator, in which the scale was raised from \$8. to \$9, the planing mill owners in Alameda County refused to recognize the award in Alameda County. Planing mill owners and cabinet manufacturers recognized the award in San Francisco County. After some considerable delay and only after a stipulation was entered into, or agreed to, whereby that if any place or mill in Alameda County refused to pay the \$9 as awarded by the arbitrator after October 1st of that year, that we would not permit our men to work there. There was a [1002] long interval of time from the time the award was handed down until, October 1st, resulting in General President Hutchison coming here to San Francisco, into this District, refusing to approve that particular clause in which it is stated that we would handle no material or products coming in here unless made under similiar conditions. As a result of all the conferences held at that time they entered into a com-

(Testimony of David H. Ryan.)

promise scale of \$8.50 to apply to the six counties, instead of four counties, but that particular clause in that particular agreement was a clause that was not approved by the general office.

Q. Am I correct in my understanding that as a result of this agreement entered into, certain clauses in which were objectionable to Mr. Hutchison, that he came out here personally and took part in these negotiations?

A. Yes. Not in the original negotiations, but he took part in the dispute that arose as to what territory was covered by the award, and the form and phraseology and the stipulations of the agreement.

Q. Do you recall the date when he was out here, Mr. Ryan? A. No.

Q. Would you say it was in 1938?

A. Yes.

Q. Now, I hand you herewith Government's Exhibit No. 301, which is entitled, "Agreement Embodying Employer-Employee Agreement of Wages, Hours, and Working Conditions," and ask you if that is the agreement whereof the agreement embodied in Government's Exhibit 288 was copied?

A. This was an agreement entered into by the Cabinet Manufacturers. I believe there was one signed by the Planing Mill Owners, also, in which over their signatures they agreed to the \$9 scale I have just referred to as made by the Arbitration Award.

(Testimony of David H. Ryan.)

Q. That was after Mr. Hutchison had been out here and taken personal part in the negotiating of this settlement, was it not?

A. No. What is the date of this?

Q. I think it is August of 1938.

A. No. He was here later. I [1003] can recall that he was here—I was in the hospital from the 11th of October, 1938, for fifteen days. He was here while I was in the hospital in October.

Q. Now, Government's Exhibit No. 301 states that "The memorandum as to payment of wages established by arbitration effective next pay day, dated August, 1938, is hereby made void." Would you explain that provision?

A. Well, may I explain this, gentlemen, that the award was handed down, and after the Planing Mill Owners in San Francisco and the Cabinet Manufacturers had agreed to recognize it, having refused to for a long time because Alameda County did not, the local unions and the manufacturers set up a committee to take care of these contracts, and it is my recollection that the Cabinet Manufacturers and the Planing Mill Owners refused to pay the money to their employees, that additional dollar, but agreed to set aside a dollar. That is my recollection, and they had an arrangement set up in that light between the representatives of the two unions and the Cabinet Manufacturers and the Planing Mill Owners, the details of which I am not familiar with.

(Testimony of David H. Ryan.)

Q. Now, Mr. Ryan, we have had testimony before this Grand Jury that after the award was made Mr. Hutchison came out, and I think the language used by the witnesses was that he kicked over the award. Do you recall anything in that connection?

A. Well, I don't know what term you may use, but he absolutely refused to approve it with that clause in it.

Q. Do you recall the date of the award?

A. No. It was around, I believe, in July. I think it was handed down in July of 1938.

Q. Well, in any event, it was prior to the date of this document, is that correct?

A. Yes, yes; it was prior to the date of that document.

Q. Now, directing your attention to this document which states in paragraph XVII., which is the paragraph you previously read:

Paragraph XVII. is changed by mutual agreement to read as follows: [1004]

XVII. In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto. The purchase, working and sales of the

(Testimony of David H. Ryan.)

following products is excepted"—then follows a list.

"XVIII. The purchase and sale of the following products is excepted—then follows a list.

"Nothing here is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws."

Now, might I ask you if, to the best of your recollection, that paragraph was inserted at Mr. Hutchison's suggestion after he came out here?

A. Well, the best of my recollection, General President Hutchison objected to the clause on the ground that it might be interpreted as a violation of federal law. I couldn't testify whether General President Hutchison wrote that clause as a substitute, but it was so written to meet his objection.

Q. I see.

A. I don't know, I cannot testify who wrote it, but as re-written it met his—overcame his objection, met his approval as re-written, as I understand it.

Q. Now, re-directing your attention to Government's Exhibit 279, which is the present working agreement with Lumber Products Association, Inc., I call your attention to the fact that Mr.

(Testimony of David H. Ryan.)

Cambiano's signature appears there, and ask you the circumstances under which Mr. Cambiano affixed his signature?

A. ° Well, this happened after we had went to the trouble of negotiating this [1005] agreement, just before that arbitration proceeding, and the award handed down, and then had through the Joint Conference Committee drawn up and signed an agreement just referred to here, which was refused the approval of our General Office. The employers, then, I cannot recall the date if I knew that, but they just emphatically refused to negotiate any further unless a representative of the general office sat in.

Now, Representative Cambiano, whose signature is on this agreement, came in and sat down in the conference with them and stated in effect that he could not put his signature on this and in doing so give approval of the General Office, but he would sign it as a witness, but after he did that it would still have to be approved by the General Office. Then he put his signature there, as it says, as a witness, on there.

Q. I think that is correct.

A. Yes. "General Representative," signed "J. F. Cambiano, Witness." I recall him explaining to them that he didn't have, as a representative of the General Office, the authority to sign a document or agreement, and in so doing commit the General Office, but signing that way that overcame their objection in a measure, at least, not altogether.

(Testimony of David H. Ryan.)

Q. To the best of your knowledge was this present working agreement as embodied in Government's Exhibit 279 approved by the General Office?

A. All of the stipulations in it, Mr. Clark, in relation to the wage scale and hours, conditions, to the best of my recollection were approved, but that particular clause in which we would not handle this, or handle something else, that was the one that he specifically refused to approve, and it had to be removed from it. The rest of it he had—he had no objection to the men getting \$9 who were getting \$8, and all that, but he wouldn't approve that.

Q. Then your present working agreement doesn't contain the restrictive clause that was read? A. No. [1006]

The Foreman: Q. And did the removal of that clause, upon the removal it did receive the approval of the General Office?

A. Well, so far as I know. I want to say you are referring to this as an existing agreement. It expired May 1st. We are now trying to negotiate an agreement now from May 1, 1940, on.

Mr. Clark: Q. Well, in the meantime you are continuing to work under the present terms and provisions?

A. We are working under the wage scale and other provisions of the agreement right along.

The Foreman: You may be excused, Mr. Ryan.

(Testimony of David H. Ryan.)

Mr. Clark: Has any member of the Grand Jury a question?

The Foreman: Then, Mr. Ryan, you may be excused and I would like to thank you, certainly, for myself and I am sure on behalf of the jury. ●

The Witness: It was quite a pleasure, I assure you.

(Witness excused and retired from the room.)

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From the Reporter's transcript of the Grand Jury which returned the indictment, showing proceedings taken on Monday, May 13, 1940, relative to the defendant Walter C. O'Leary:

**WALTER C. O'LEARY**

called as a witness.

The Foreman: You do solemnly swear that you will keep secret the testimony you are about to give before this Grand Jury, and that you will testify to the truth, the whole truth, and nothing but the truth, so help you God?

Mr. O'Leary: Yes.

Mr. Clark: Q. Mr. O'Leary, you have appeared here as a witness before, have you not?

A. Yes.

Q. Are you the business representative of Local 550 of the United [1007] Brotherhood?

A. I wish to read a statement, Mr. Attorney.

Mr. Clark: You may proceed.

The Witness: If I may. I am here pursuant to

(Testimony of Walter C. O'Leary.)

the direction of a subpoena which states that inquiry is being made as to alleged offenses against the Anti-Trust Laws of the United States. I am advised that claim is or may be made that I am or may be involved in the commission of such alleged offenses. I assert the right guaranteed to me by the Constitution of the United States not to be compelled in a criminal action to be a witness against myself. I am advised by counsel that under the statutes of the United States I can be denied my rights under this—I am advised by counsel that under the statutes of the United States I can be denied my rights under this constitutional guarantee unless I am offered immunity from prosecution for or on account of any transaction, matter or thing concerning which I may testify or produce evidence. I therefore choose to stand upon my constitutional rights unless I am informed on the record that the United States elects to offer me immunity as stated.

Mr. Clark: In other words, Mr. O'Leary, you decline to answer any questions that may be put to you unless you are granted immunity?

A. I do.

Mr. Clark: For the sake of the record, Mr. Reporter, let it be shown that the Government refuses to grant Mr. O'Leary immunity.

Q. Now, Mr. O'Leary, I am going to ask you certain questions and you can refuse to answer them.

I refer to this book which is entitled "United

(Testimony of Walter C. O'Leary.)

Brotherhood of Carpenters and Joiners of America—Minute Book of Local Union No. 550, Oakland, California," and I refer specifically to the minutes of October 14, 1938, where it is stated,—

"Vote on a compromise offer by the Mill Owners to take effect in six counties, namely, Santa Clara, San Mateo, San Francisco, Marin, Alameda and Contra Costa, presented by Brother Joe Cambiano, [1008] Organizer of United Brotherhood of Carpenters and Joiners of America, Union Closed Shop Agreement wages set at \$8.50 and \$7.70. Business Agent O'Leary was called and explained that he had went around with Business Agent Wilcox of No. 42 and William Kelly, President of the Conference Committee, and Joe Cambiano, of the United Brotherhood, and contacted the Mill Owners Association heads in all the above counties. Brother Cambiano gave us a good talk on the proposed agreement and urged its adoption. A motion was made and seconded that we approve and adopt the recommendation of the Conference Committee as submitted by the Mill Owners. Board Member Abe Muir was present and gave his usual good talk and stated he did not want to hear any criticism of the Committee, as he felt they had done good work."

Now, directing your attention to those minutes, have you any recollection concerning the circumstances of that meeting?

A. Well, I am standing on this letter, Mr. Attorney.

(Testimony of Walter C. O'Leary.)

Q. All right. In other words, you refuse to answer?

A. I do, on the statement.

Q. Now, directing your attention to the minutes of October 21st, 1938, where the following entry appears:

"Brother Kelly, of No. 42, was called and stated we all had lots of work ahead to keep all counties in line. Brother Irish reported for the Conference Committee stating General President Hutchinson was present. The Committee was well pleased to meet him. He discussed our situation with us and answered many questions. Brother Brock and Craft, of Local 42, were present and responded with a few remarks. Brother Cambiano stated for our benefit that under no circumstances can our stamps leave the shop, which is the law of the United Brotherhood."

Do you recall the circumstances of that meeting, Mr. O'Leary?

A. I will stand on this statement read here, Mr. Attorney.

Q. You refuse to answer the question?

A. I do. [1009]

The Foreman: Then, Mr. O'Leary, we will ask you to await us in the witness room. You are excused, sir, temporarily.

The Witness: All right.

(The witness excused and retired from the room.)

From the Grand Jury proceedings of Friday, May 17, 1940, ten o'clock, A. M.:

WALTER C. O'LEARY

Called as a witness; sworn by the Foreman.

Mr. Morris R. Clark: Q. Mr. O'Leary, you were directed, were you not, by the Court last Monday to appear here to-day and give your testimony with regard to the records that were produced by you pursuant to subpoena duces tecum?

A. I was.

Q. And you are appearing this morning pursuant to the Court's order, is that correct?

A. Yes, sir.

Q. Now, I hand you a book which on its first page bears the notation: "United Brotherhood of Carpenters and Joiners of America, Minute Book of Local Union No. 550, Oakland, California," and [1010] ask you if you recognize that book.

A. Yes, that is our minute book, and that is the signature of the Secretary, Mr. Bennett.

Q. What office do you occupy in Local No. 550, Mr. O'Leary?

A. Business Agent.

Q. Are you familiar with the contents of this book?

A. Other than I hear them read and listen to them; they all have to do with the business of the Local. I couldn't remember them word for word.

Q. But, generally, you are familiar with them?

A. Generally, I am; I should be.

Q. Generally, do you attend the meetings that are covered by these minutes?

(Testimony of Walter Q. O'Leary.)

A. I haven't missed a meeting, unless I was sick, and that has been two or three; that is about all.

Q. Now, directing your attention particularly to the minutes of August 5, 1938, I notice the following entry: "President Sholden appointed Brothers Irish, Ovenberg, O'Leary and Cincinnati to confer with Mr. Edwards, of the Wood Products, Incorporated, who was seeking admission to address our meeting. By motion, a recess of ten minutes was taken to allow the Benefit Committee to sell tickets," and so forth.

Now, do you recall the circumstances under which Mr. Edwards sought to address your meeting?

A. Yes. We were then locking horns over a change in working conditions. We at that time had a trade movement on, and Mr. Edwards wanted to get before our local and influence our members to vote his way. That was his idea, and the President denied him admission, and we went out in the hall and talked to him. He had a long letter at that particular time, and he wanted to read it to our members.

Q. When you say there was a trade movement on, and that you had locked horns, what do you mean by that?

A. Well, we were in favor of getting better conditions, and he was representing the mill owners, and was opposed to it. [1011]

Q. Now, specifically, when you say you wanted

(Testimony of Walter C. O'Leary.)

better conditions, what were the particular conditions that you were objecting to that existed at that time, and what were the particular conditions you wanted changed?.

A.. We have no objections to conditions we work under, but we strive to improve them, and that is what we were doing then.

Q. Now, Mr. O'Leary, you have not answered my question yet. What were the conditions you wanted improved?

A. Our wages and hours, and we at that time had an arbitration on, and he denied that Alameda County was a participant in the arbitration, and would not go with it; the arbitration award gave us \$9 a day, and we were on strike for a couple of weeks, and in some way we compromised for \$8.50, due to his efforts.

Q. Was there any discussion in the Union at that time, or with Mr. Edwards, regarding the so-called restrictive clause in the contract, which provided that millmen should only work on mill work that was locally processed? A. Not then, no.

Q. That did not enter into the situation at that time? A. No.

Q. Didn't the Millmen's Union over on that side of the bay go out on strike about that time?

A. We went on strike that fall, due to that trade movement. Just what the dates of the strike were, I couldn't say, but we were out for two weeks and two days, I think—twelve days, I think we were out.

(Testimony of Walter C. O'Leary.)

Q. Now, pursuing the contents of this meeting of August 5th, 1938, I see the following notation:

"Secretary Bennett gave an outline of the activities of the Conference Committee."

What is the Conference Committee?

A. Well, we have what we designate sometimes as a Metropolitan Area here, and we have a committee from Local 42 and 550—

Q. 42 is the Union on this side of the bay?

A. On this side of the bay, and there is often a delegation from 262 in San Jose up here. [1012]

Q. How about 162?

A. 162 is a carpenters' union in San Mateo County, and there are some millmen belong to that union, and I guess it is Simons, their business agent, sets in here, but there is a Millmen's Union—

Q. Where is Local 36 located?

A. In Oakland.

Q. That is what?

A. Carpenter's Union.

Q. Do they sit in on your Conference Committee?

A. No.

Q. They do not? Now, the Conference Committee, from the Union's standpoint, then, consists of representatives of 550 and 42?

A. 550 and 42, 262, of San Jose, and, recently, the local from Pittsburg sits in with us.

Q. What is the number of that?

A. I think that is 1956. I might be off there, but it is the Millmen's Union in Pittsburg, California.

(Testimony of Walter C. O'Leary.)

Q. Now, what about the District Council of Carpenters? Do they have a representative on that Conference Committee?

A. Nearly always, Dave Ryan will set in with us.

Q. Representing the District Council?

A. Representing the District Council. Sometimes he is not present, but nearly always he is.

Q. What about the General Office, the International Brotherhood? Do they have a representative that sits in on those meetings?

A. Since that affair in 1938, the settlement with them was that hereafter a representative of the General Office must sit in; to make the Six Counties set-up workable.

Q. And who sits in?

The Witness (Continuing) And the six counties is trying to make the wages the same in all counties — Joe Cambiano has set in.

Q. What is his official designation?

A. Organizer for the United Brotherhood of Carpenters and Joiners of America.

Q. Now, who sits in on behalf of the employers on that Conference Committee?

A. Not on that one; that is just our own Conference [1013] Committee. The one we set in with the employers on, we designate that the Negotiating Committee.

Q. So this Conference Committee is strictly a union set-up?

A. Strictly a union set-up, that cooks up the

(Testimony of Walter C. O'Leary.)

proposition on what we are going to demand, presents it back to the locals for their approval, who go to the employers for it.

Q. Does that Conference Committee keep minutes? A. Yes.

Q. Where are those minutes kept?

A. I have them.

Q. You have custody of them? If you were served with a subpoena by this Grand Jury to produce those minutes would you comply with it?

A. I would.

Q. Now, referring to the Negotiating Committee that you just mentioned, what does that consist of, Mr. O'Leary? A. Two from each local.

Q. Representing Union labor?

A. Yes. There are not always there two people from each local representing union labor.

Q. Mr. Ryan sit on that committee?

A. He does. He has been absent once or twice.

Q. Mr. Cambiano sit on that committee?

A. Always,—all but once; that was due to a mistake.

Q. Do you sit on that committee?

A. I do, in an advisory capacity.

Q. Who else sits on that committee on behalf of Local 550?

A. The original committeemen designated have not always been able to attend, due to some changes in the firm to which they belong, or where their services were hard to dispense with, and it changes

(Testimony of Walter C. O'Leary.)

from time to time. Originally, it was—I think it was E. H. Ovenberg and Jack Sholden on that original committee, then it changed lately here. The last committee was: Irish and Ovenberg, I think.

Q. Mr. Kelly sit on that committee?

A. Not now.

Q. Mr. Bennett sit on that committee?

A. He has at times, as an alternate. [1014]

Q. Do you recall whether Mr. Kelly has at times sat on that committee?

A. Originally, at that particular date, he was on it, yes, but they had a little political upset in 42 and he was taken off.

Q. Now, who sits on that committee in behalf of 42?

A. At present, it is William Wilcox and Lindley, with Charley Helbing, the business agent, sitting in in an advisory capacity, like myself. Lindley has been unable to get off from work, and Wilcox and Helbing have been there on this last negotiating committee.

Q. Who sits on the committee in behalf of the employer organization?

A. Beginning on our side of the bay, Wood Products is represented by D. N. Edwards, and on this side of the bay, Harry Gaetjen is the secretary of what is known as Secretary of Lumber Products, Incorporated. Jack Hart, of the Hart Mill & Lumber Company has sat in—these are the mill owners.

(Testimony of Walter C. O'Leary.)

Q. How about Mr. Ennes, of the Cabinet Manufacturers?

A. Those are the only mill owners that have been present that I can recollect, and for the Cabinet Manufacturers, Mr. Ennes.

Q. How about Mr. Pierce?

A. Pardon me. Mr. Pierce is sitting there, from Santa Clara County, who represents the Pacific Manufacturing Company, and Jack Pierson, representing the Redwood Manufacturing Company, of Pittsburg, California.

Q. But so far as San Francisco is concerned, Mr. Gaetjen represents the mill owners here, is that correct?

A. I would say yes. Mr. Hart has been there.

Q. And so far as the mill owners on the other side of the bay are concerned, Mr. D. N. Edwards represents them, is that correct?

A. That is correct.

Q. Does Cambiano sit in on the meetings of this Negotiating Committee?

A. He does.

Q. Does the Negotiating Committee keep any minutes? [1015]

A. Ennes acts as secretary. Whether he keeps any minutes or not I don't know.

Q. Where does the Negotiating Committee usually meet?

A. The meetings of the recent negotiations have been held at—on 24th street, near Howard. It is on the left going out—I don't know whether it is east or west—I get turned around, in the City.

(Testimony of Walter C. O'Leary.)

Q. That is Mr. Gaetjen's office?

A. Mr. Gaetjen's office.

Q. The office of the Association?

A. Yes, sir; it is a store.

Q. Now, referring to the minutes of September 23, 1938, I notice the notation there that "The Building Trades Meeting of September 20th was reported on by Delegate Irish, stating the council had negotiated a stabilization agreement with employers for a period of two years, which is thought will be of great help to the building industry." Do you recall that meeting?

A. Yes, I recall the incident.

Q. Was that before or after you had gone out on strike on the other side of the bay?

A. I think it is right in—the dates tie in pretty close, there.

Q. Well, if the agreement—to refresh your memory—or maybe it will clear your recollection, if the agreement had been negotiated, and Mr. Irish reported the negotiation of the agreement, in all likelihood the strike was over, isn't that likely to be correct?

A. When that stabilization agreement was being drawn up, the efforts of the various crafts to better their conditions, which were then under way—it was presumed they would go through with it. In other words, I don't think that particular time that the stabilization agreement would block any particular craft, because I think it is written in there some-

(Testimony of Walter C. O'Leary.)

where that wages and hours are open at certain periods to negotiation. In other words, the conditions under which a craft works with the people who employ them, they have autonomy to make certain alterations there. [1016]

The Foreman: Q. In other words, it is not a blanket agreement, binding on every craft?

A. It is binding on certain incidents; in other words, they wanted to keep wages and hours stable for two years; it was an attempt to do that.

Mr. Clark: Q. Now, it says: "Building Trades meeting of September 20th was reported on by Delegate Irish." What is the Building Trades meeting of September 20th, if you recall?

A. There is a council that meets in Oakland, known as the Building and Construction Trades Council, of Alameda County, and they meet on Tuesday night.

Q. Who constitute the members of the Building and Construction Trades Council of Alameda County?

A. Well, when there is nobody jumping over the traces, it constitutes all the crafts employed in the building industry.

Q. When I say "Who constitute the members," does the President of each union attend as a member, or does the business agent attend as a member, or, generally who—

A. Delegates are elected from each union.

Q. To attend the meetings?

(Testimony of Walter C. O'Leary.)

A. Yes, they are elected from our local, anyway. I don't think they are appointed; I think they are all elected.

Q. I notice in this same meeting of September 23, 1938: "Brother Leidich, of the Label League, stated the magazines Time and Life were unfair to organized labor." What is the Label League?

A. That is the league in Alameda County that promotes the sale of goods and articles that bear the Union Label, designating they have been made under fair working conditions.

Q. Who constitute the membership of the Label League?

A. Various organizations that of their own volition are willing to send a delegate there to become a member of that league; they do not all belong to it.

Q. Does Local 550 have a delegate on the Label League? [1017]

A. We have.

Q. And have had for sometime past?

A. Yes.

Q. And could you describe with some greater degree of exactitude just what the Label League does, what its function is in connection with the industry, particularly mill work?

A. Well, they have very little to do with mill work that I know of. They promote labels generally. They meet—I don't know just what night they meet. They have recently rented quarters for label exhibits over there, to promote and exhibit

(Testimony of Walter C. O'Leary.)

goods, like shirts, ties, tobacco, and that I know of, we have never had any exhibit with them.

Q. Now, your contract with the employers calls for the use of the Union Label, does it not?

A. Yes, it does.

Q. Now, is the Label League that is mentioned in the minutes of this meeting—is that organization used to enforce the provisions of the contract with—your contract with the employers with regard to the use of the label? A. It is not.

Q. Do you sit as a representative of 550 in any meetings of the Label League?

A. I have not.

Q. Now, referring to the minutes of October 7th, I notice the following entry: "Brother Irish, Chairman of the Observers Committee says he needs more men with cars to follow trucks"—

The Witness: What date was that?

Mr. Clark: That is October 7th.

The Witness: That is when we were on strike, in October.

Mr. Clark: Q. Now, what is the Observers Committee, or what was the Observers Committee?

A. The Observers Committee was the one who checked stuff leaving from the mills out of which we had struck, the mills in which the strike was existing.—

Q. Do you presently have an Observers Committee?

A. No. (Continuing)—to make it known to

(Testimony of Walter C. O'Leary.)

the Carpenters that that stuff came from the mill that was on strike. [1018]

Q. "Brother Irish says he needs more men with cars to follow trucks" — Would you amplify that entry?

A. In other words, there were some trucks leaving mills that did not have a car to go along with them and tell the carpenters this stuff came from a struck mill.

Q. In other words, on mills that were struck, you kept a car nearby, with some delegates of your union in it, is that correct? A. Correct.

Q. And when the truck left the mill, that car followed the truck to its destination on the job?

A. If they were there, they would do that, yes.

Q. And when the truck arrived at the job, someone from that car that was following would inform the carpenters that the mill work came from a struck mill, is that correct? A. Yes.

Q. Referring to the minutes of October 21, 1938, the following excerpt appears: "Organizer Cambi-  
ane stated he wished a complete report on all shops in this district. He also reported the P. M. Company"—that is the Pacific Manufacturing Company? A. Yes.

Q. "ready to sign our new agreement, and that Local 262 to have a special meeting Monday, October 24th to approve it, and that Local 1956, of Pittsburg, would hold a special meeting Thursday, October 27 also to approve the same agreement with

(Testimony of Walter C. O'Leary.)

the Redwood Manufacturing Company and after that he would call a Joint Committee meeting with the Six Counties, namely, Santa Clara, San Mateo, San Francisco, Marin, Alameda and Contra Costa. Brother Kelly, of Local 42, was called and stated we all had lots of work ahead to keep all counties in line. Brother Irish reported for the Conference Committee, stating General President Hutchison was present. The Committee was well pleased to meet him. He discussed our situation with us and answered many questions"—Now, can you amplify this statement that "We all had lots of work ahead to keep all counties in line." Would you indicate what [1019] the significance of that entry is?

A. Well, from the remarks of Cambiano, what was said—that is just about when we were settling up on the \$8.50 compromise. Brother Kelly worked hard on the arbitration, and got a dollar a day increase through the arbitrator, and was very much disappointed at the way things were going then, and he probably still had hopes of getting the dollar.

Q. What is the significance of that phrase, "to keep all counties in line"? Do you recall?

A. To keep the ranks from breaking and going back to work, I guess, or keeping still the demand for that dollar.

Q. Do you remember Mr. William Hutchison, General President of the order being present at that meeting?

(Testimony of Walter C. O'Leary.)

A. He was not at any of our meetings. We met him in the office of the District Council of Carpenters one Saturday morning when we were having a Conference Committee meeting, and he stepped in and we shook hands with him and had a little blah-blah there, and that is about all that amounted to.

Q. "Brother Irish reported for the Conference Committee, stating General President Hutchison was present. The Committee was well pleased to meet him. He discussed our situation with us and answered many questions."— That was not at the general meeting of Local 550?

A. No, it was at the Conference Committee meeting at the District Council office, and he stepped in for a few moments there before we met, and then left.

Q. And you were a member of that Conference Committee? A. I was.

Q. And you were present when Mr. Hutchison was there? A. Yes.

Q. What was the nature of the conversations or remarks that were made at that time by Mr. Hutchison?

A. Oh, they were general; I couldn't tell you just what they were, probably wishing us well, and hoping we would increase our wages, I guess, and cut our hours, and get better conditions; I guess that is about what it amounted to. [1020]

Q. Was that the only time during this period

(Testimony of Walter C. O'Leary.)

that you met Mr. Hutchison, or did you meet him on other occasions?

A. That is the only time I met him, and that our Committee met him that I know of.

Q. To the best of your recollection, was any discussion had at that time, or at any other time you know of, with Mr. Hutchison, regarding the so-called restrictive clause in the contract?

A. I don't know of any.

Q. To the best of your recollection, you never heard it mentioned? A. No.

Q. Now, referring to the minutes of December 2, 1938, I notice the following entry: "Business Agent O'Leary reported on the Conference Committee meeting held Saturday, November 26th. Secretary Ryan"—that is David Ryan, of the District Council of Carpenters? A. Yes.

Q. "to arrange a meeting with the employers. Such a meeting was held Thursday, December 1st for the purpose of establishing a uniform agreement in this District." Do you recall that meeting with the employers?

A. I can't recall the date, or just that particular meeting, but no doubt I was there.

Q. Do you remember what transpired?

A. From the wording there I would say we were closing up our agreement. It takes some time to get those fellows signed up; they were hemming and hawing, and this Edwards, of Oakland, was the backiest of the lot. He caused a hell of a lot of trouble.

(Testimony of Walter C. O'Leary)

Q. That mentions a uniform agreement in this district. What is included in the phrase "this district?"

A. That would be the six counties, in this case.

Q. Would you name them?

A. Yes, Marin County, San Francisco County, San Mateo County, Santa Clara County, Alameda County and Contra Costa County.

Q. And when that agreement was finally negotiated for the six [1021] counties, was it a uniform agreement?

A. Yes. There was a couple of spots, we found out later, where there was a difference, but we all thought surer than hell it was identical then, but there was a slight difference in one or two places. It was practically a uniform agreement.

Q. Now, when you say there was a slight difference in one or two places, do I understand that that was with regard to wages or hours?

A. Yes, wages, that is all.

Q. Where does that slight difference exist, if you can recall?

A. It occurred in Pittsburg. We didn't know it then, but it occurred in their sash and door department.

Q. That is the Redwood Manufacturing Company?

A. Yes, and a couple of men in their frame department, and in Santa Clara County there was a difference in the sash and door department scale;

(Testimony of Walter C. O'Leary.)

that is, mentioning time and scale, but actually, on the payroll, they were doing just as well as they were here.

Q. Now, referring to the minutes of December 9, 1938, I notice the following entry: "Business Agent O'Leary gave his weekly report stating the Marcus Hardware Store"—where is the Marcus Hardware Store?

A. Seventh and Washington in Oakland.

Q. (Continuing) "were handling non-union ironing boards from Los Angeles. The Building Trades to insist they go back to Los Angeles." Do you recall the circumstances surrounding that entry?     A. Yes, I do.

Q. Would you state them to the Grand Jury?

A. Well, they were handling non-union ironing boards there from Los Angeles, and we have a couple of firms over there that make ironing boards in large quantities, and they can't get men to work as cheap here as they can get them to work in Los Angeles, and they can't sell ironing boards outside of Oakland to any great extent if those cheap Los Angeles boards are allowed to come in here, and we at least used our efforts to prevent the merchandising of that [1022] article in Oakland.

Q. Those were non-union made ironing boards?

A. Yes, made in Los Angeles.

Q. Now, referring to the minutes of December 16th, 1938:

"Brothers Ryan, Cambiano, and O'Leary held a

(Testimony of Walter C. O'Leary.)

conference with Mr. Cox, of the Peerless Fixture Company"—where is the Peerless Fixture Company?

A. I can give you the exact address—it is in Oakland——

Q. Well——

A. Wait a minute, it may be—yes, it is Oakland—it is right close to the Oakland line—no, I will tell you—it is in Berkeley. It is on San Pablo Avenue, and the streets come together there—that is Peerless, you said? Yes, they are in Berkeley, 2608 San Pablo Avenue, Berkeley.

Q. (Continuing) "held a conference with Mr. Cox, of the Peerless Fixture Company on ironing boards and medicine cabinets report accepted." Do you recall the circumstances surrounding the incident mentioned in that excerpt from the minutes?

A. Yes, they wanted some special concessions to meet this cheap Los Angeles competition in ironing boards, and medicine lockers.

Q. And you met with them? A. We did.

Q. What was the result of that meeting?

A. We didn't grant them any concessions.

Q. Do you know what became of the ironing boards? A. What ironing boards?

Q. About which you conferred?

A. They sell them.

Q. They continued to sell them?

A. Oh, yes. They were not handling Los Angeles ironing boards; they make their own.

(Testimony of Walter E. O'Leary.)

Q. What was the nature of the concessions they wanted?

A. They wanted some cheaper wages to meet the Los Angeles wages.

Q. I see. I notice here reference to the State Mill Committee. What is the State Mill Committee, Mr. O'Leary?

A. That is an unofficial body composed of as many delegates as [1023] we can get to assemble from time to time, mostly in the northern part of the State; we meet to try to get uniform conditions in all the mills over the State, particularly Los Angeles.

Q. The members of that committee are all union labor? A. All.

Q. Mr. O'Leary, have you ever heard of the Northern California Lumber Dealers Association, or the California Lumber Merchants Association, Northern Division? A. No, I have not.

Q. You are not familiar with that organization?

A. No. There is a Cabinet Manufacturers Association or something, Northern Division; I have heard that mentioned but not lumber men.

Q. Now, referring to the minutes of January 13, 1939, I notice that it states, "Business Agent O'Leary reported checking over the sidings and freight sheds and mills during the week and not finding any hot mill work." Do you recall the circumstances surrounding your activities as mentioned in this excerpt from the minutes?

(Testimony of Walter C. O'Leary.)

A. Yes.

Q. Would you state them to the Grand Jury?

A. Well, every once in a while somebody will break out with a rash over there that there is a hell of a lot of non-union mill work coming in from the North—

Q. That is, from Washington and Oregon?

A. Yes, I guess they don't come in from British Columbia, and they want to know what the hell the business agent is doing,—“How are we going to live and work here if that cheap work comes in?” And naturally enough, they want me to go out and check on it.

Q. When you go out and check, what do you do?

A. Go around to all of the sidings and look them over, and see if there is any cars setting on them, and see what is in them.

Q. If you find that there is any so-called “hot mill work” in any cars on any of these sidings, what do you do then?

A. Go to the employer, or the man that is purchasing them and try to get him to use local made mill work. Now, in using the words “mill work” it has to do with moldings—there was a [1024] time when all surfaced material used to bear the label, and the carpenters would not handle it unless it did. At present, why, four-side stuff can come in; we don't bother about it, but if there is moldings comes in, we object to it.

The Foreman: Q. Does molding include patterned—

(Testimony of Walter C. O'Leary.)

A. Yes, run to pattern.

Mr. Clark: Q. Now, I notice this entry says, "hot mill work." What is "hot mill work"?

A. No stamp on it.

Q. As a matter of fact, Mr. O'Leary, whether it has a stamp or not, if it comes from outside this area, you object to it, do you not?

A. Yes, we object to it if it is made at a lesser rate than ours, lesser scale.

Q. Whether it has a stamp on it or not?

A. Yes, we object to it, but our objections are overruled when there is a stamp on it; it goes just the same.

Q. Who overrules your objection?

A. General President Hutchison.

Q. Under what circumstances did he overrule your objection? Have you a letter from him, or anything of that kind?

A. Personal. We had in our old trade rules a paragraph wherein the building trades would not handle material made at a lesser rate than was paid here, and that was in force up until 1921.

Q. You had that in your agreement of 1938?

A. And some three or four years ago, when General President Hutchison was out here, we went up to his apartment and had a session with him, and he very definitely informed us that where that label appeared, it was just like a \$5 bill, it had to be honored; now, that was a different stand from what they took years before; that is the stand

(Testimony of Walter C. O'Leary.)

right now; if it has got the label on, it has to be used—or, they use it.

Q. Now, when you say three or four years ago, when President Hutchison was here, that was not the trip that is mentioned—

A. No, no.

[1025]

Q. That was previous to that?

A. Oh, yes.

Q. Now, where was President Hutchison staying? You say you went to his apartment.

A. There was a hotel strike here then. He generally stays at the St. Francis; but there was a hotel strike here then. It was an apartment house—I couldn't tell you where it was.

Q. You were present at this meeting?

A. I was.

Q. Who else was present?

A. I think Kelly and Ovenberg and I.

Q. How about Ryan, was he?

A. I think Ryan was there, yes.

Q. What about Cambiano?

A. I don't think he was there. In fact, I would say definitely no, he was not.

Q. Now, will you state again just what Mr. Hutchison's conversation was with your committee that met him at that time?

A. Well, we looked upon that condition and the enforcement of it as being responsible for the fact that we had the best conditions in mills in the United States right here, and we were very, very

(Testimony of Walter C. O'Leary.)

desirous of having that particular section in our trade rules continued in enforcement, and we went to take that matter up with him, and he said, "No, if it has got the label on it, the carpenter has to honor it."

Q. And since that time, have you honored that union label? A. Yes.

Q. Am I correct, then, that since that time you have made no efforts, yourself, Mr. O'Leary, to keep out from this area so-called "hot cargo" that comes in from the Northwest and has the Union Label on it?

A. It has cooled down when it has got the label on it; it is not hot.

Q. You have never attempted to stop any—

A. No.

Q. Do you recall whether this last meeting that you have mentioned with Mr. Hutchison was prior to 1936 or subsequent to 1936?

A. Just about then, I think—'35 or '36.

Q. Well, you say there was a hotel strike on?

A. That would give you the key to the situation; I couldn't tell you just what year. [1026]

Q. That was the big hotel strike that was on?

A. Yes.

Q. It has been called to my attention that the hotel strike here was in 1938, so that would be two years ago, rather than four years?

A. Oh, it was before that, unless my time is slower than I think it is. There might have been another hotel strike.

(Testimony of Walter C. O'Leary.)

Q. Were there any minutes or records kept of your meetings with Mr. Hutchison at that time?

A. No, just an informal meeting with him there. We went over to see him; that is all.

Q. Now, referring to the minutes of January 20, 1939: "Business Agent O'Leary reported he was still checking all shops, mills and sidings for unfair mill work. Report accepted." Was that a continuation of your activities as described in the previous meeting? A. Exactly.

Q. And again, I want to ask you as to whether or not when you found the Union Label in 1939 on a cargo of mill work from out of the State; whether or not you made any attempt to check the delivery, or obstruct the delivery of that mill work?

A. No.

Q. None, whatsoever?

A. No. I would go to the purchaser of it and try to induce him to buy local made material.

Q. Never put any pickets on a car?

A. No.

Q. During 1939?

A. Not I—it would not be on labeled mill work, if I did.

A Juror: May I ask a question at this time?

Mr. Clark: Certainly.

The Juror: Q. Mr. O'Leary, assuming that you had some men working out at—or, ready to go to work at a building, and a truck load of material left, we will say, the car, or the factory, or the shop,

(Testimony of Walter C. O'Leary.)

and it arrived at the store without any stamp or label on it. Would the men—would these union men that were ready to go to work with this material, handle it?

A. If it came from a union shop, yes. [1027]

Q. Without a label or stamp?

A. They would get in touch with me, and we would kick up a little fuss around there—those mill men are too damned lazy to look after their own conditions, and then they all expect you to do something—

The Juror: Q. We will just forget that part of it. We will say it left there—and it probably might be, as you say, "hot cargo." In other words, it did not have the stamp or label on it, but it arrived at its destination, ready to be fitted into the job, whatever was necessary. These men that are there, are waiting for it. Now, it arrives. Would they handle it?

A. If they knew it was hot?

Q. I am not saying anything about its being hot. It has no stamp or label on it.

A. They would get in touch with me, if they were doing their duty as union men, to find out if it was O. K.

Q. What would you do?

A. Find out what mill it came from.

Q. Then what?

A. And if it was a union mill, I would tell them, "Okey doke, go ahead," and we will have the men

(Testimony of Walter C. O'Leary.)

go ahead and stamp it, or get around it the easiest way possible. We are supposed to send it back to the mill and make the mill owner haul it back and see that it is stamped, but we have got to use a little common sense, and if everything is union, why get nasty about it?

Mr. Clark: Q. Now, referring to the minutes of June 24, 1938—this is going back a little—I see there is an entry there that \$53 was appropriated “B. T. C.,” that is Building Trades Council, is it not? A. Yes.

Q. “for special investigator.” Do you recall what that money was appropriated for?

A. I couldn't remember that, no.

Q. Is it customary for the Building Trades Council to do any investigating for your organization? A. They evidently did then. [1028]

Q. Do you recall the nature of that investigation? A. No, I don't, right now.

Q. Do you recall whether or not you had any part in it? A. I do not.

Q. Now, in the minutes of September 15, 1939, the following entry appears: “President Irish reminded our Conference Committee to attend the joint meeting to be held in Oakland, September 16 at 12 o'clock noon.” What was that joint meeting? Do you recall what it was? That is last September:

A. We were probably getting ready to notify the mill owners that we desired a change in the present agreement; that is about what it was, and

(Testimony of Walter C. O'Leary)

we met in Oakland that particular time. We generally meet in San Francisco.

Q. It refers to "Joint Meeting," that would be the meeting of 42 and 550? A. Yes.

Q. And possibly 162?

A. And 1956, yes.

Q. And possibly 262?

A. Yes, with 262 and 1956; not 162.

Q. Do you recall attending that meeting, or what transpired there, if you did attend?

A. I don't know; if I am on the list, I must have been there.

Q. This was last September.

A. I would say I was there.

Q. Do you recall what transpired at that meeting?

A. No, I don't, just exactly what transpired.

Q. But you think it was concerned with the—

A. Yes, getting ready to take on the mill owners for improved conditions.

Q. As a matter of fact, you are at present negotiating, are you not, with the mill owners?

A. We are, yes.

Q. Those negotiations are being carried on by your Conference Committee, is that correct?

A. Negotiating Committee.

Q. By your Negotiating Committee. In the course of those negotiations with the employer organizations, has there been any discussion with regard to the restrictive clauses in the contracts? [1029]

(Testimony of Walter C. O'Leary.)

A. When you say "restrictive clauses" you mean the restriction in the use of certain kinds of mill work, whether it be union, non-union, or—

Q. More particularly, the restriction with regard to the permission—or, with regard to the exclusion of mill work that is patterned outside of the six counties.

A. No, I don't think there is anything in it other than the general union condition that we want to prevail.

Q. Well, I asked you if there has been any discussion. Has it been mentioned?

A. Well, now, whether it was mentioned at their meetings, or not, I don't know. I don't think so.

Q. Well, you have been perfectly frank here and stated that the unions did not want it to come in.

A. No, we don't.

Q. And is that still the expression of the unions' attitude on it?

A. Oh, yes.

Q. Now, in these negotiations looking toward the signing of a new contract, what has been the employer organization's attitude with regard to those particular clauses? Do they want them in the agreement or out of the agreement?

A. They leave that to us. When it is mentioned, "That is up to you fellows, if you want to continue the wages you have got here, you have got to do it yourself. We aren't doing that." That is their answer to us on that.

Mr. Clark: I see. Unless there is some member

(Testimony of Walter C. O'Leary.)  
of the Grand Jury who has some question to ask.  
Mr. O'Leary, I think we can excuse him.

The Foreman: Is there a question, gentlemen?  
You are excused, subject to notice and request?

Mr. Clark: Subject to notice.

The Foreman: Would it be agreeable to you, Mr. O'Leary, to be excused now subject to notice, reasonable notice, to return under the same subpoena? [1030]

The Witness: Yes, sir.

The Foreman: Then you are excused pending such notice.

(The witness was excused and retired from the room.)

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From the Reporter's transcript of the Grand Jury which returned the indictment, showing proceedings taken on Monday, May 13, 1940, ten o'clock A. M., relative to the defendant Charles Helbing:

### CHARLES HELBING

called as a witness.

The Foreman: Be sworn, Mr. Helbing. You will solemnly swear that you will keep secret the testimony you are about to give, before this Grand Jury, and that you will testify to the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Helbing: I do.

(Testimony of Charles Helbing.)

The Foreman: Be seated.

Mr. Clark: Q. What is your full name, Mr. Helbing? A. Charles Helbing.

Q. What position do you occupy with reference to Local 550 of the United Brotherhood of Carpenters and Joiners?

A. I don't belong to 550,—42.

Q. You are connected with 42? A. Yes.

Q. What position do you occupy with regard to 42? A. Business representative.

Q. How long have you been business representative?

A. Well, this is—I was 1935, from '34—'33 to '36, and then from '39 until now.

Q. Now, Mr. Helbing, I hand you here Government's Exhibit No. 279, and ask you to look at the last page and answer whether or not [1031] that is your signature?

A. Yes, that is my signature.

Q. Will you state what that agreement is, or what that document is?

A. That is an agreement with the shops and mills in this locality.

Q. Is that agreement presently in full force and effect; in other words, is that your present agreement? A. Yes.

Q. Will you state the circumstances under which your signature came to be affixed to that document?

A. As a negotiating committee, and as one of the negotiators negotiating this agreement.

(Testimony of Charles Helbing.)

Q. You were on the Negotiating Committee for Local 42, is that correct? A. Yes.

Q. Were you also on the Negotiating Committee for Local 550?

A. Well, 550 and this is the same, I think; 550, I think, has—let me see that.

Q. Well, this agreement is signed by 550, is it not?

A. Yes. They have—you see, the Association and all of them get together and try to consummate an agreement, see?

Q. Will you state who were the members of the Negotiating Committee, how it was chosen, for instance, and who represented the unions and who represented the employers?

A. This agreement—we have a committee, I think of six, and these were chosen as representatives as to final negotiation. Then we have a committee in the organization that tries to formulate a set-up in demanding conditions, you know. Then after those organizations have chosen that then this committee is appointed to try to carry that through.

Q. Well, your name appears as representing No. 42, Charles Helbing. That is correct?

A. Yes.

Q. R. H. Miller. Who is R. H. Miller?

A. He is one of the Committee, one of the Negotiating Committee.

Q. On behalf of Local 42? A. Yes.

Q. Who is W. L. Wilcox?

(Testimony of Charles Helbing)

A. He is the Secretary.

Q. Who is Mr. ~~C. W.~~ Irish?

A. He is a representative from 550. [1032]

Q. Who is Mr. W. C. O'Leary, whose name appears here?

A. He is a representative from 550.

Q. I notice Mr. J. F. Cambiano's name appears here. Who is he?

A. He is the representative from the general office.

Q. When you say the "general office," do you mean the International Brotherhood?

A. Yes, of carpenters.

Q. Of which Mr. Hutchison is the President?

A. Yes.

Q. I notice the Bay Counties District Council of Carpenters is signed here by Mr. D. H. Ryan. What is their connection with Local 550 and Local 42?

A. We have a District Council of Carpenters that takes in the bay area of all the carpenters, San Mateo, San Francisco, Alameda and Marin, and Mr. Ryan is Secretary of the Carpenters' organization, of the District Council of Carpenters.

Q. Are the Carpenters in San Mateo County included? A. Yes.

Q. Do you know the number of that local in San Mateo County? A. 162.

Q. Are you sure it is 162, and not 262?

A. No; 262 is in Santa Clara County.

(Testimony of Charles Helbing.)

Q. 162 is in San Mateo County? A. Yes.

Q. Did Mr. Cambiano sit in on these negotiations? A. Yes.

Q. If you will think back now and recall these negotiations, were several meetings had, or one meeting?

A. Oh, it takes several meetings to carry that through, you know, because we don't always agree; you know how those things are. They thresh backward and forward.

Q. To the best of your recollection were you present at all of the meetings?

A. Well, I could say yes, I mean a general answer to that would be "Yes".

Q. Was Mr. Miller present, to the best of your recollection—Mr. R. H. Miller?

A. He might have been absent at some particular times? I couldn't just exactly say he was there all the time. [1033]

Q. How about Mr. W. L. Wilcox?

A. The same thing. I couldn't verify whether he was there at that meeting.

Q. But your recollection is that, generally, he was present? A. Yes, generally.

Q. How about Mr. Irish?

A. Well, it would be about the same answer to that.

Q. What about Mr. O'Leary?

A. That is the same answer.

Q. Now, to the best of your recollection was Mr. Cambiano present at all of the meetings?

(Testimony of Charles Helbing.)

A. No, I don't think he was present at all of them; I couldn't say for sure.

Q. Was he present at some of them?

A. Yes.

Q. Would you say he was present at a majority of the meetings?

A. Well, I couldn't safely say whether he was at a majority, but he was there very often.

Q. What about Mr. Ryan?

A. About the same answer; sometimes Ryan would have business otherwise, you know.

Q. When these meetings met did you do anything in the nature of appointing a temporary chairman, or anything of that nature? Who presided?

A. I think Cambiano presided on some of those meetings.

Q. You think Cambiano presided?

A. On some of them, and then there was another time there where others presided; he wasn't always there, you know.

Q. But you have a definite recollection that Mr. Cambiano presided at some of them?

A. Yes.

Q. After you had generally agreed on the terms of these agreements, what was the next step with regard to their execution?

A. Well, wages and so on and so forth were agreed to.

Q. I mean with regard to the actual signing of

(Testimony of Charles Helbing.)

the agreements. Did these have to be sent on to the general office in Indianapolis for approval?

A. Oh, yes.

Q. How were they sent; were they mailed on?

A. Yes, they would be mailed. [1034]

Q. According to your understanding, who was it who approved these agreements?

A. When these agreements came up the organizations endorsed them. Then they go through the District Council for endorsement, and then they are sent to the general office.

Q. There is nothing on here that indicates any—no signature on this document to indicate any approval by the general office. You say they were mailed to the general office at Indianapolis?

A. Well, they might be approved where these particular documents were not sent; there might have been a copy sent.

Q. A copy may have been sent? A. Yes.

Q. But it is a regular course of business, is it not, to send either the original or the copy to the general office for approval? A. Yes.

Q. To the best of your recollection, who approved them in the General Office?

A. Why, I guess, the General President.

Q. That is Mr. Hutchison?

A. I don't know just exactly which one approved that; might have been somebody acting in his place. I couldn't recall that, you know, because they have, the General President isn't always there.

(Testimony of Charles Helbing.)

Sometimes it is by the Vice-, or so on and so forth, who approves it. Now, this signature, or that approval, I couldn't give you any real definite answer on that.

Q. Your only answer to that is they are sent to the general office in Indianapolis and someone approved it? A. Yes.

Q. In the normal course of business that would be by Mr. Hutchison, or someone acting in his place and stead?

A. That would be it, yes.

Q. Well, now, I will ask—

A. That would be Mr. Hutchison or somebody acting in his stead.

Q. Now, when they are returned to Local 42, is the copy approved by someone in the general office?

A. As I stated before, it first comes before the Local, then to the District Council, then to the [1035] General Office. Then it is a record as it stands.

Q. Well, now, so the Grand Jury will get this clearly before them, these agreements are signed by the representatives of Local 42, is that correct?

A. That is correct, yes.

Q. And also by the representatives of Local 550, is that correct? A. Yes, that is correct.

Q. And by the Bay Counties District Council of Carpenters, is that correct?

A. That is correct.

Q. And by Cambiano, as the International representative? A. That is correct.

(Testimony of Charles Helbing.)

Q. And by the employer organizations you negotiated with?

A. Yes.

Q. Then a copy, either the original or a copy is sent on to the general office, is that correct?

A. Yes.

Q. Do you send a letter of transmittal with that copy or the original that is sent on to the general office?

A. Well, that I don't know. The Secretary of the District Council could answer that question better than I could.

Q. Well, I asked you that because in response to the subpoena we asked for all those records and correspondence, and there was no copy or original of a letter of transmittal presented to the Grand Jury. Would you be able to explain the absence of such a letter of transmittal?

A. Well, the local doesn't get that. The District Council gets that.

Q. Well, there was no such letter or copy of a letter presented on behalf of the District Council to the Grand Jury. Would you have any explanation for the absence—

A. Well, it might be the approval of the representative from the General Office that meets with us, see?

Q. In other words, Mr. Cambiano's approval would suffice for the General Office?

A. He might have the approval.

Q. Now, following that line of questioning up, Mr. Helbing, there [1036] was no letter presented on

(Testimony of Charles Helbing.)

behalf of Local 550, Local 42, or the Bay Counties District Council of Carpenters which indicated that the copy or the original of this document had been returned. Q. Could you explain the absence of any such letter? A. No, I couldn't.

Q. To the best of your knowledge a thorough search was made of the files of Local 42 to get all the correspondence that would be responsive to the subpoena? A. Yes.

Q. And you have no way of accounting for the absence of a letter?

A. No, I haven't.

The Foreman: May I ask a question, Mr. Helbing: The agreement forwarded to the General Office in Indianapolis would be forwarded by your Union or by the District Council of Carpenters?

A. By the District Council.

Mr. Clark: Q. This method of negotiating agreements and the approval by the general office applies to the other wages and hours agreement that you negotiated, for instance, with the Commercial Store Front and Fixture Institute; is that correct?

A. Yes.

Q. And it also applies to the type of contracts negotiated with the employer-employee organizations across the bay; is that correct?

A. Yes.

Q. Now, I hand you a document entitled "Journal" and ask you if you can identify it.

A. I can identify it, yes.

(Testimony of Charles Helbing.)

Q. To the best of your knowledge would you state what that book that I just handed you is?

A. Well, that is from the Treasurer, I suppose.

Q. If I suggested to you that that is the record of receipts and disbursements of Local 42, cash receipts and disbursements of Local 42, would you say that that is a correct statement of the nature of that book that I have handed you?

A. Well, that I couldn't say, because I don't keep these books. [1037]

Q. Well, what I have in mind is, from your general knowledge of the management of Local 42's affairs, would you say that that is the record of cash receipts and disbursements?

A. Yes, from my general knowledge, yes.

A Juror: It is hard to hear you, Mr. Helbing, over here. Will you speak a little louder, please?

The Witness: Yes, I will.

Mr. Clark: Q. Directing your attention to page 54, under the date of December 7, 1937, under the title of "Receipts" is "December 14, For dues and application fees, 206.25." Would you state, how much are your individual dues?

A. Individual dues are \$2.

Q. \$2 a month? A. Yes.

Q. How much are your application fees?

A. That varies. A man below 50 is \$50 at the present time. Above 50, between 50 and 60, is \$25, and above 60 is \$10.

(Testimony of Charles Helbing.)

Q. Now, directing your particular attention to the next entry, "Refund from State Mill Committee, 520.57." To the best of your knowledge, what does that entry represent?

A. What is that?

Q. "Refund from State Mill Committee, 520.57." A. I don't know.

Q. Have you ever heard of the State Mill Committee? A. Yes.

Q. What is the State Mill Committee, to the best of your knowledge?

A. I believe that is not down there correct.

Q. Well, to the best of your knowledge what is the State Mill Committee?

A. State Mill Committee is a voluntary organization that assembles and they bring up questions pertaining to the industry.

Q. Who are its members?

A. Well, I couldn't tell off-hand.

Q. Well, I mean generally, are they union men or are they employers? A. Union men.

Q. It is a Union organization? A. Yes.

Q. No employers involved? A. No.

Q. Now, under the date of June 21st, 1938, here is another item on page [1038] 78: "From State Mill Committee, 116.57." Would your same explanation apply to that?

A. Well, what is that there, expenditure for what?

Q. It is a receipt.

(Testimony of Charles Helbing.)

A. No, there was never anything collected from that, there. Those things, they are not down in the proper form, in my estimation.

Q. Well, would you explain to the Grand Jury what would be the proper form for putting those entries there?

A. Well, I couldn't say that, because this, this here—I don't propose to give any testimony outside—of course, I could carry on a general explanation, but so far as getting stuff here, here in pursuant to the direction of subpoena, which states that an inquiry is being made as to alleged offenses against the Anti-Trust Laws of the United States, and I am advised that claim is or may be made that I may, I am or may be involved in the commission of said alleged offense, and I assert the rights guaranteed to me by the Constitution of the United States not to be compelled in a criminal action to be a witness against myself. I am advised by counsel that under the statute of the United States I can be denied my rights under this constitutional guarantee unless if I am offered immunity from prosecution for or on account of my transactions or matters or things concerning which I may testify or produce evidence. I therefore choose to stand upon my aforesaid constitutional right unless I am informed on the record that the United States elects to offer me immunity as aforesaid.

Mr. Clark: In other words, you refuse to testify any further; is that correct?

A. Yes.

(Testimony of Charles Helbing.)

Mr. Clark: Now, for the record, Mr. Reporter, will you make it clear that the Government specifically denies any intention at this time to grant Mr. Helbing immunity by virtue of his examination herewith with reference to certain documents produced by Local 42 of the United Brotherhood of Carpenters and Joiners. [1039]

The Foreman: Mr. Helbing, you may be excused temporarily, if you will be good enough to wait for us in the ante-room.

The Witness: Yes.

(The witness was excused and retired from the room.)

From the Grand Jury proceedings of Friday,  
May 17, 1940:

CHARLES HELBING

called as a witness; sworn by the Foreman.

Mr. Tom Clark: Q: Will you give the reporter your name, please?

A. Charles Helbing.

Q: You are the business agent of Millmen's Union No. 42? A. Yes, sir.

Q: These are the minutes that were brought before the Grand Jury. Are you familiar with these minutes?

A. Well, I couldn't say—I don't write them, you know.

Q: You attend the meetings? A. I do.

Q: You, then, are more or less familiar with

(Testimony of Charles Helbing.)

what goes on in the meeting as reflected through the minutes?

A. I am, I suppose.

Q. We just have a few questions we want to ask you to clarify some of the things recorded in the minutes. Referring to the meeting of October the 5th, 1937—we know that these dates, of course, are several years ago, and you can't remember exactly what went on, but if you will use the best recollection you have and try to explain some of the things that are recorded here, we would appreciate it. On that date it is recorded in the minutes: "Reports of delegates of B. T. C. and D. C. of C. received and approved." That is Building Trades Council and the District Council of Carpenters, those initials? A. Yes.

Q. What is the procedure with reference to reports of that kind? Does your Union have a report from the Building Trades Council of every meeting that the Building Trades Council has? [1040] A. They do.

Q. Are you the custodian of the records or reports?

A. No, the Secretary keeps that.

Q. I mean, of the Building Trades Council.

A. No.

Q. Your union keeps those records, though, do they?

A. They do—I assume they do.

Q. Then, does the Union pass upon those

(Testimony of Charles Helbing.)

minutes or just—all through your minutes, here, I notice it says, "Minutes concurred in" of the Building Trades Council. Does that mean that the union passes on the correctness of the Building Trades Council minutes as submitted? Or, what does it mean?

A. They concur in the minutes, yes; they coincide, they concur.

Q. They concur in the minutes of the Building Trades Council? A. Yes.

Q. You have a man that goes to the Building Trades Council for that purpose?

A. Yes, sir, we have a delegation of, I think, six or seven—I think seven.

Q. Your one union does, your local?

A. Yes.

Q. Reading the next sentence, "Nicolai Door Company removed from the 'unfair list'."

A. Well, the unfair list is a concern that perhaps went against the—handled material that was not fair to us—that is not fair in our operations.

Q. What do you mean by "material that is not fair to Local 42?"

A. Well, non-union material—was not manufactured under union conditions.

Q. Do you include any other material, besides non-union? A. No.

Q. Do you include any material that is manufactured under working conditions which pay less than the Local 42?

(Testimony of Charles Helbing.)

A. If it has got the stamp, and made under union conditions, yes.

Q. It is on the fair list?

A. Yes, they are fair; we consider them fair. [1041]

Q. Even though the wages are lower than the wages of 42?

A. Yes, as long as they carry the stamp and carry the working conditions of the locality, why, we go along with them.

Q. You mean by that, that the stuff that comes in from the North, from union mills, as reported in these records, here, would be on the fair list if it had the union stamp on it?

A. Yes.

Q. Regardless of the wages?

A. The carpenters will install anything if it has got the stamp. No way of stopping it.

Q. I am talking about Local 42, as reflected in your minutes, here. I don't mean the Carpenters' unfair list, I mean Local 42's unfair list.

A. Well, when it is considered fair, as I say, it is fair—employs union men, and has union material.

Q. It doesn't matter whether the wages are lower or higher, or what they are, just so long as there is a union stamp on it, is that your testimony?

A. That is what we consider fair. We can't consider anything else fair. If it has got the union stamp on it, we take it along. We don't put any-

(Testimony of Charles Helbing.)

thing on the unfair list that has got the stamp, if it is made under union conditions.

Q. How does the company get on or off the unfair list?

A. By the method of employing union men.

Q. I meant, through your minutes, here? It is recorded in a number of instances where your local recommended to the Building Trades Council that a certain company be put on the unfair list. Is that the procedure, for the local to recommend to the Building Trades Council to place a company on the unfair list? Or what is the procedure?

A. Well, I don't know, if we have—yes, that is the procedure.

Q. Why was the Nicolai Company removed on this date from the unfair list?

A. Undoubtedly, because they employed our men, working in their concern, in their place.

Q. Why were they put on the unfair list in the beginning? [1012]

A. Unfair material—as I said before, they wasn't employing our men, and working with the men who did not belong to the organization.

The Foreman: Q. Were they running a non-union shop?

A. The men wasn't in the organization. When we took them in the organization, they were on the fair list.

Mr. Tom Clark: Q. In other words, as Mr. Van Smith asked you, before they were put on the

1346. *Lumber Products Assn., Inc., et al.*

(Testimony of Charles Helbing.)

unfair list; they were running a non-union shop, is that true?     A: Yes.

Q. That is true? You are certain of that?

A. Yes.

Q. Is it true that certain of the union mills who employ all A. F. of L. labor do not have the stamp?

A. Yes.

Q. Why is that?

A. Those that do not have the stamp perhaps have not got the required number of men to work there—that is, to call for a stamp.

Q. Any other reason why?     A. None.

Q. It couldn't be because they don't pay the scale of wages that they pay down here?

A. Oh, you are talking about here, or where else?

Q. Oh, anywhere. I mean anywhere in the country. Is there any company that does not have the stamp, although they employ all union labor, A. F. of L. labor?

A. I can only speak of this locality on that.

Q. You are not familiar with the rules?

A. Yes.

Q. What is your rule about that?

A. They are—I don't just get your question right.

Q. What is the rule of Local 42 with reference to whether or not some companies don't have the stamp and some companies do have the stamp, that are still A. F. of L.?

(Testimony of Charles Helbing.)

A. Any company in this locality that complies and employs our men can get a stamp.

Q. That is, the Local 42 stamp?

A. No, that is the Brotherhood stamp. [1043]

Q. The Brotherhood stamp? And does that rule apply to the mills in Oregon and Washington?

A. I guess it does—I couldn't swear to that, but that is the rule of the International.

Mr. Morris Clark: Q. Mr. Helbing, do you know Mr. Jones, of the Jones Hardwood Company?

A. I have spoken to the gentleman.

Q. As a matter of fact, you called on him; didn't you, and asked him to put up one of those placards that the Grand Jury has seen here?

A. He asked me first—he sent me a letter in reference to certain things and conditions, and I went down to see Mr. Jones.

Q. And you asked him at that time to put up a placard, didn't you?

A. Yes, to boost local made material.

Q. Now, do you recall some doors that were coming in for a Ferry Building job down here, from a concern in Wisconsin?

A. How long ago was that? When was that date?

Q. Oh, that was within the last year.

A. Within the last year?

Q. Yes. A. No, I can't recall that.

Q. You don't? Don't you recall that Mr. Jones

(Testimony of Charles Helbing.)

Q. had ordered some doors from this concern in Wisconsin and that he couldn't bring them in here?

A. No, he was given concessions—I didn't transact that particular part of it. There were two of us on the job, here, part of the time last year.

Q. Do you recall, Mr. Helbing, that due to the fact that this company in Wisconsin did not have the label, that Mr. Jones obtained certain letters from them stating that they were fully organized A. F. of L., with their local union number on those letters? Do you recall that?

A. No, I don't. What I did tell Mr. Jones was this, when he asked me the question in reference to these doors. I said, "When that time arrives, when you have the doors coming in here, why, we will take it up."

Mr. Tom Clark: Q. The minutes reflect the appointment of a committee with Local 559, a Conference Committee. What is the purpose [1044] of that Conference Committee?

A. The Conference Committee is a committee to get together in reference to getting conditions for labor, hours, and so on and so forth, that we discuss, and take it up with the bosses to try to consummate an agreement.

Q. Is that the Conference Committee, or is that the Negotiating Committee you are talking about?

A. That is the Negotiating Committee.

Q. I am talking about the Conference Committee. So as to refresh your memory, on October 19,

(Testimony of Charles Helbing.)

1937 your minutes show that "The Chair appointed Brothers Edwards, Reinhart, and Gehrman as a committee to meet with Local 550 to make plans for enforcement of the mill stamp." What does that Committee do?

A. I wasn't in office at that time. I was out, and I was—let's see, October, I was out of the City at that time—that was what, 1937?

Q. 1937, yes.

A. Yes, I was out of the City at that time. I was up North.

Q. Do you have a committee of that type, now, since you have been in office?

A. To do what?

Q. To enforce the mill stamp, are the words used here, "to make plans for the enforcement of the mill stamp."

A. Well, yes, we have. We might say that we go to different concerns and we try to negotiate agreements with them along—that is, with the mill and cabinet shops, and so on and so forth, that don't belong to the association; we try to arrange an agreement with all the industry as a whole, whether in or out of the association, and that is what we say, "enforce the stamp"; that is, it is not held to the association. In other words, we ask everybody to go along with our program, the entire industry.

Q. That is the Negotiating Committee. I mean the Enforcement Committee that enforces the stamp rule that you have, that committee.

(Testimony of Charles Helbing.)

A. Oh—

Q. What do they do?

A. There is no committee on—you might [1045] say—how that reads there; so far as enforcement is concerned, that is left up to the—the organization requests them to look out on street so and so, to see if we can't get everybody going along with the organization.

Q. Do you have a committee of your union, and on that same committee representatives of Local 550, for the enforcement of the stamp?

A. Well, that there is—I don't just know how you are trying to put it—the object of that committee—it is not a separate committee; that Conference Committee is first in conference; there is a Committee of the Whole, we would say, from the organizations in reference to conditions concerning the organization, and to work out a condition workable to the organization, by getting agreements and so on and so forth, and from that committee is chosen what you would call the negotiating committee—from that committee is chosen the ones to negotiate an agreement with the employers. That is as plain as I can make it; I can't make it any different than that, because that is all it is.

The Foreman: Except that it is not responsive. Counsel is asking you: Have you now a committee to enforce the labels? Have you? A. No.

The Foreman: All right.

Mr. Tom Clark: Q. Are you the enforcing agency now?

(Testimony of Charles Helbing.)

A. I am the business representative of the organization.

Q. Do you make an effort to enforce the stamp—union label? A. Sure.

Q. What do you do in reference to that, to enforce the union label? What are your duties?

A. I go to the concern and ask them to go along, and I have no trouble getting them to go along. I don't have no trouble enforcing it. Practically every concern in this city—I don't know of any that doesn't employ our men. That goes for furniture houses, cabinet industry, and the planing mills, and all small shops, and so and on so forth.

[1046]

Q. What I am talking about, is not going around and trying to get more members, and trying to settle differences; I am talking about what acts you do to enforce the rule regarding the use of a union label. What do you do in reference to that?

A. Just as I said, we ask this man to go along with the organization, and he does, and he gets the stamp, and he goes along. That is the way it is done. There is no picket methods used.

Q. Well, on November 9, 1937, the minutes show that it was moved and seconded that the Secretary request the District Council of Carpenters to place the firms of Davis Hardwood Company and the Ocean Avenue Mill, managed by George R. Nelson, on the unfair list. Why was that motion carried? Why were they placed on the unfair list?

(Testimony of Charles Helbing.)

A. I told you then I was up in the North, between October and until February of the following year.

Q. You don't know?     A. No.

Q. The minutes show that you have a State Mill Committee. What do they do?

A. It is a committee that meets in this State—different parts of the State, in order to promote the interests of the organization.

Q. What does it consist of?

A. As a rule, it is a committee of five, from different localities—committee of five, from San Francisco, say, Oakland, San Jose, and different localities.

Q. Have you been on that committee?

A. Yes, sir.

Q. Do they have minutes?

A. Well, I guess they have had minutes, but it is a voluntary organization; it is not what you would call a recognized group. It is only for ourselves, to acquaint the situation to a larger body; that is, like the State Council of Carpenters, or the International.

Q. Acquaint what situation?

A. In reference to certain conditions that prevail throughout the State. We try to get them organized—different sections—get them organized. If we find a locality that is not organized, we call for help and try to organize them. [1047]

Q. Who would keep those minutes?

(Testimony of Charles Helbing.)

A. Well, that would be McFarland, of Sacramento, I think, is Secretary.

Q. What local is that, that he is in?

A. He is in the Carpenters' Local up there in Sacramento. Well, I don't know just exactly what the number of that is any more; I can't recall that off-hand, but you can get that out of the—

Q. McFarland? A. Yes.

Q. Now, in your minutes of November 30, 1937, it is recorded: "Also reported that Mr. George R. Nelson had signified his intention to operate on a signed union basis within the coming week, and made a recommendation that the Davis Hardwood Company be picketed immediately. It was moved and seconded to confer in the recommendation of B. A. Edwards." Do you remember that?

A. I just told you that I was out of the city at that particular time.

Q. When did you come back, do you remember?

A. I came back in February.

Q. February? You don't have any recollection of that, at all? A. That transaction, no.

Q. Are you familiar with the Weber Fixture matter? A. To a certain extent.

Q. Was it a union shop in 1937? A. No.

Q. You came back in February, 1938, you say?

A. Yes.

Q. In the minutes there are several references to reports from the Building Trades Council. You have those reports, do you?

(Testimony of Charles Helbing.)

A. Yes, we have.

Q. Would you bring them down if you were subpoenaed to bring them? A. Yes, sir.

Q. Now, on April the 19th, 1938, you were there then, weren't you? You had come back?

A. April the 18th?

Q. These books show that you were there, so these are right, aren't they?

A. If they have got it on there that I was back — [1048] you see, I was running down—when I came back—now, get this right—I had a place down in the country, and I lived down in the country, and I would work up here, and then sometimes I would travel back—but I wasn't holding office at that time.

Q. Who was business agent at that time?

A. In 1938?

Q. Yes, April 19th, Edwards?

A. Edwards.

Q. It says, "B. A. report Christenson Lumber Company pickets on on northern shipments 11½ by 6 T. and G., also Coos Bay 2 by 6 shipment picketed." Do you remember that?

A. No, as I say, I was working—sometimes I would work in San Mateo and I wasn't always—

Q. You were at this meeting, the record shows. Do you remember that discussion in the meeting?

A. No, I don't. Have they got me in there?

Q. Yes, it says, "Brother Helbing stated", and you made a statement.

(Testimony of Charles Helbing.)

A. I can't just recall that.

Q. "Brother Arnold reported jams, etc. coming in from McElroy \* \* \* no stamp." Do you remember that?

A. I can't recall all of that stuff, you know. You know, you have lots of meetings.

Q. What do you mean by "no stamp"? Just what do you mean by that?

A. Stuff that wasn't stamped; must have been made under unfair conditions.

Q. Didn't have any stamp on it at all?

A. No.

Q. "Discussion arose on Wheeler & Osgood doors being molded and stamped by local No. 6." Do you remember that?

A. I don't know that—how does that state?

Q. "Discussion arose on Wheeler & Osgood doors being molded and stamped by Local No. 6."

A. By Local No. 6?

Q. By Local stamp No. 6.

A. By Local No. 6 stamp; no, but I tell you what might have happened there; there might have been some doors brought in and they—which they do—made a raised molding or something over the door—you know—changed the [1049] design of the door, and so on and so forth, and then perhaps they stamped it.

Q. Where is Local No. 6?

A. Stamp No. 6—Stamp No. 6 is in Eureka Mill.

(Testimony of Charles Helbing.)

Q. It had a Local stamp No. 6 on it, and a moment ago you said you never questioned any stuff that came in with the stamp. Why would the union be questioning that one?

A. I can't just get you on that.

Q. Then it goes on to say, "Brother Helbing stated that mill stamp was not properly enforced and that the carpenters were not demanding stamped material. Fight of Local No. 42 was to see that carpenters does enforce stamp." Do you remember that statement made?

A. Yes, we had made several statements of that kind at different times, occasionally, to bring the attention to the carpenter, to look for stamped material.

Q. Then you say, "Pledge to mill owners to enforce stamp not carried out, and it may become injurious to coming negotiations." What do you mean by "Pledge to mill owners"?

A. Well, as written there, it goes like this: if material comes in here—floats in here freely, unstamped material, and it was put up by the carpenters, and so on and so forth, it would not derive any protection to the industry or the men, either; that is to the effect that if articles come in here that is made under an unfair condition—

Q. Well, I was not talking about that; I was talking about this sentence that says "Pledge to Mill owners to enforce stamp." What did you mean by that?

(Testimony of Charles Helbing.)

A. The words wasn't—they are not put down correctly. We never use that word "pledge."

Q. It is in the agreement—what do you mean, you had an agreement with reference to the stamp, and the agreement was not being enforced, is that what you mean?

A. No, it is not exactly the agreement not being enforced, but it is in the action in support of the carpenter to look for the stamped material. [1050]

Q. Well, you don't say here anything about the carpenters, you say "Pledge to mill owners." I am talking about that.

A. We don't make no pledge; our agreement shows no pledge of any kind.

Q. What do you mean—we will just forget about the word "pledge"; just what do you make, then? What did he mean there when the Secretary wrote that in there? You were there, and that is your statement. What did you mean?

A. It means that we wanted stamped material used in this locality; that is what it means.

Q. What did you mean by "pledge to mill owners"? That is what I was trying to find out.

A. I never used the word "pledge." We don't use the word, because we have no pledge, but we knew—we know this: if the stamp is not enforced, the industry can't pay us if we floor material that is unstamped, and we expect to get a condition from them—that is what it means.

Q. You have attended the meetings with the mill owners?

A. Yes, sir.

(Testimony of Charles Helbing.)

Q. Has that been discussed in those meetings with mill owners? A. How is that?

Q. Has that been discussed in the meetings with the mill owners?

A. Yes, we tried to have stamped material, and we did everything we could possible, to enforce the stamp.

Q. The last statement you made was that the reason for that was that if the material came in, why, the owners couldn't pay the wages. Did you discuss that with them?

A. Weil, naturally, they told us if we couldn't—nothing could be done about the situation, why, they couldn't do anything, themselves, but we did—if you will notice in the agreement, to compete with the stock proposition that comes in from the North, we set a scale there to try to meet that condition; with a lower rate of scale, we tried to compete and tried to meet that condition, and give them that chance to meet that condition. [1051]

The Foreman: Q. What do you mean, that you gave the employer a reduction from the scale in order to meet that situation?

A. We have in the stock—if you will notice in the agreements, we have such as a special orders or—you know—there is one scale of wages, and on material that floats from the North, that is made cheaper, and so on and so forth, that there is no control over, we give them—that particular branch has got a lower rate of wages, to try to meet the competition.

(Testimony of Charles Helbing.)

A Juror: Q. Has this material that comes in from the North got a stamp on it?

A. It has at the present time; it had not, say, a couple of years back.

Mr. Tom Clark: Q. Did you ever stop any in 1939 that had a stamp on it? A. No.

Q. Who keeps the minutes of the Conference Committee of 550 and 42?

A. Walter O'Leary, I think, from 550.

Q. Who keeps them for you; he does?

A. Yes.

Mr. Morris Clark: Q. On October 11, 1938, Mr. Helbing, the minutes state, "Mr. D. N. Edwards" — that is Mr. Edwards of Wood Products, is it not?

A. D. N. Edwards?

Q. Yes, "Mr. D. N. Edwards wants a six-county set-up." A. Yes.

Q. Is that Mr. Edwards of Wood Products?

A. Yes.

Q. "Said he represents Loop Lumber Company. Local Union No. 42 has a signed agreement with Loop Lumber Company. P. M. wanted to sign for \$8.40, Mr. D. N. Edwards said no, not less than \$8.50. Wants material from North kept out. Has jobs in the Valley and cannot compete." Do you recall the circumstances at the meeting under which that situation arose?

A. That was what, in October?

Q. October, 1938.

A. I can't recall dates so very well. Was that

(Testimony of Charles Helbing.)

not the time that the agreement was thrown over, and trying to transact another agreement?

Q. I presume it was. A. Yes. [1052]

Q. But do you recall the statements being made that "Mr. D. N. Edwards wants material from the North kept out", that he "has jobs in the Valley and cannot compete"? Do you recall that?

A. No, I don't. Is that in our minutes?

Q. That is a statement made by Brother Wilcox.

A. Well, that was the other business agent.

Q. Then Mr. Kelly stated that Mr. D. N. Edwards sat at all meetings except one, the one where hours and wages were the issue. Do you recall—did you sit in on any of those meetings at that time? A. 1938?

Q. That is 1938. A. No.

Q. You did not sit in at those meetings?

A. No.

Q. You were on the Conference Committee, were you not, or the Negotiating Committee, one or the other?

A. Not when that contract was—if you are referring to that—if that is the date; I can't remember the dates just exactly right, but if that has got reference to that set-up in reference to during the time that Edwards would not go along with the organization and he would not sign up the Bay agreement, to arrive at a six-county set-up, I wasn't in that committee.

Q. You were not in that committee.

(Testimony of Charles Helbing.)

A. No.

Mr. Tom Clark: Any questions, Gentlemen? If not, I believe that is all, Mr. Foreman.

The Foreman: Mr. Helbing, I presume that counsel might wish to question you further. On reasonable notice, if you are excused now, would you return under the present subpoena?

A. Yes.

The Foreman: Then you are excused.

The Witness: Thank you.

(The witness was excused and retired from the room.)

[Endorsed]: Filed Jun. 23, 1942. [1053]

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR TRANSMITTING OF ORIGINAL EXHIBITS AND INCORPORATING MATTERS BY REFERENCE INTO BILL OF EXCEPTIONS, AND EXTENDING THE TERM OF COURT.

It Is Hereby Stipulated by and between the above-named plaintiff and the union defendants and appellants, acting through their undersigned attorneys, that the original exhibits admitted in evidence in the case, or marked for identification, and offered in evidence and rejected, shall be forwarded by the Clerk of the above-entitled Court to the

United States Circuit Court of Appeals for the Ninth Circuit, to accompany the transcript of record on appeal, but that pending the preparation of the Bill of Exceptions and Transcript of the Record on Appeal, that the Exhibits be and remain in the custody of the Clerk of this Court.

It Is Further Stipulated that this Stipulation and Order shall be contained in the Bill of Exceptions and that so much of [1054] said Exhibits as shall not, by reason of their nature or length, be set forth in the Bill of Exceptions, shall, by this reference be incorporated in and made a part of said Bill of Exceptions to the same extent and effect as though set forth therein at length.

It Is Further Stipulated that the Findings of Fact and Conclusions of Law on Pleas in Abatement, filed January 14, 1942, shall be transmitted as a part of the Clerk's record under Rule VIII of the Rules of Procedure in Criminal Cases, and by this reference such findings and conclusions are incorporated in and made a part of the Bill of Exceptions without being repeated therein at length.

It Is Further Stipulated that for all purposes of the case and the appeals herein, the term of Court shall be extended to and including August first, 1942.

Dated: June 11, 1942.

THURMAN ARNOLD  
FRANK J. HENNESSY  
WALLACE HOWLAND

Attorneys for Plaintiff,  
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and Appellants.

It is So Ordered.

Dated: June 11th, 1942.

A. F. ST. SURE

Judge of the United States  
District Court. [1055]

### CERTIFICATE

I, A. F. St. Sure, Judge of the United States District Court for the Northern District of California, Southern Division, and the Judge before whom the trial of the above-entitled case was had, do hereby certify that the foregoing Bill of Exceptions, consisting of four (4) volumes, contains all of the evidence offered, admitted or adduced at the trial of said cause, and further contains all of the proceedings had and the exceptions taken which are applicable to the questions raised upon this appeal and said Bill of Exceptions is hereby approved, settled, allowed, certified and filed as a true and correct Bill of Exceptions in said cause, and is hereby made a part of the record in said cause, all

within the term of Court and time required by law, and within the time fixed by the order of the undersigned Judge and the order of extension made by the United States Circuit Court of Appeals for the Ninth Circuit, which is on file herein.

Dated: June 23, 1942.

A. F. ST. SURE,

United States District Judge.

Receipt of a copy of the within proposed bill of exceptions consisting of 4 volumes including this is hereby admitted this 13th Day of June, 1942.

WALLACE HOWLAND,

Attorneys for Plaintiff,

United States of America.

[Endorsed]: Filed Jun 11, 1942. [1056]

[Title of District Court and Cause.]

### VERDICT

We, the Jury, find as to the defendants at the bar on the First Count of the Indictment as follows:

Brass & Kuhn Company	Guilty
Commercial Fixture & Store Front Institute	Guilty
Fink & Schindler Co.	Guilty
L & E Emanuel, Inc.	Guilty
Mangrum, Holbrook, & Elkus, a corp.	Guilty.

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Mullen Manufacturing Company	Guilty
Alameda County Building & Construction Trades Council	Guilty
The Bay Counties District Council of Carpenters of the United Brother- hood of Carpenters and Joiners of America	Guilty
The United Brotherhood of Carpenters and Joiners of America	Guilty
The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42	Guilty
The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 556	Guilty
J. F. Cambiano	Guilty
Joseph L. Emanuel	Guilty
J. G. Ennes	Guilty
Charles Helbing	Guilty
C. H. Irish	Guilty
W. P. Kelly	Guilty
Walter O'Leary	Guilty
John Mullen	Guilty
Emil H. Ovenberg	Guilty
Charles Roe	Guilty
	[1057]
Dave Ryan	Guilty
W. L. Wilcox	Guilty

L. H. HEARD,  
Foreman.

[Endorsed]: Filed Dec. 12, 1941. [1058]

1366 *Lumber Products Assn., Inc., et al.*

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA.

vs.

BRASS & KUHN COMPANY, COMMERCIAL  
FIXTURE & STORE FRONT INSTITUTE,  
FINK & SCHINDLER CO., L. & E. EMAN-  
UEL, INC., MANGRUM, HOLBROOK &  
ELKUS, a corp., MULLEN MANUFACTUR-  
ING COMPANY, ALAMEDA COUNTY  
BUILDING & CONSTRUCTION TRADES  
COUNCIL, THE BAY COUNTIES DIS-  
TRICT COUNCIL OF CARPENTERS OF  
THE UNITED BROTHERHOOD OF CAR-  
PENTERS AND JOINERS OF AMERICA,  
THE UNITED BROTHERHOOD OF CAR-  
PENTERS AND JOINERS OF AMERICA,  
THE UNITED BROTHERHOOD OF CAR-  
PENTERS AND JOINERS OF AMERICA  
MILLMEN'S UNION No. 42, THE UNITED  
BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA MILLMEN'S  
UNION No. 550.

#### JUDGMENT

On this 20th day of December, 1941, came the  
United States Attorney, and the defendants above

named, appearing in proper person, and by counsel, and

The defendants having been convicted on verdict of guilty to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that Brass & Kuhn Company, Commercial Fixture & Store Front Institute, Fink & Schindler Co., L. & E. Emanuel, Inc., Mangrum, Holbrook & Elkus, a corp., Muller Manufacturing Company, Alameda County Building & Construction Trades Council, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America. The United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550 be and each of them are hereby sentenced to pay a fine to the United States of America in the sum of Five Thousand and No/100 (\$5,000.00) Dollars; .

1368     *Lumber Products Assn., Inc., et al.*

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the  
Attorney General.

Entered and filed this 20th day of December, 1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Judgment as to defendant Brass & Kuhn Company modified this 10th day of January, A.D. 1942.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Entered in Vol. 32 Judg. and Decrees at Page  
611. [1059]

*vs. United States of America*

1369

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

vs.

D. N. EDWARDS, ANDREW P. NELSON, NELS E. NELSON, and ROBERT W. SHANNON.

### JUDGMENT

On this 22nd day of December, 1941, came the United States Attorney, and the defendants above named, appearing in proper person, and by counsel, and

The defendants having been convicted on plea of nolo contendere to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that D. N. Edwards, Andrew P. Nelson, Nels E. Nelson, and Robert W. Shannon, be and each of them are hereby sentenced to pay a fine to the United States of America in the sum of One Thousand and No/100 (\$1,000.00) Dollars; It is further ordered that execution of Judgment be stayed for Ten Days.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the  
Attorney General.

Entered and Filed this 22nd day of December,  
1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Entered in Vol. 32 Judg. and Decrees at Page  
612. [1060]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2.

UNITED STATES OF AMERICA.

vs.

ACME MANUFACTURING CO. INC., BOOR,  
MAN LUMBER CO., EUREKA MILL &  
LUMBER COMPANY, EUREKA SASH,  
DOOR & MOULDING MILLS, HOGAN  
LUMBER CO., LOOP LUMBER & MILL  
COMPANY, THE LUMBER PRODUCTS AS-  
SOCIATION, INC., SMITH LUMBER CO.,  
TILDEX LUMBER CO., E. K. WOOD LUM-  
BER CO., WOOD PRODUCTS, INC., ZE-  
NITH MILL & LUMBER CO.

### JUDGMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendants above named, appearing in proper person, and by counsel, and

The defendants having been convicted on plea of nolo contendere to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in

millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no sufficient cause being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that Acme Manufacturing Co., Inc., Boorman Lumber Co. Eureka Mill & Lumber Company, Eureka Sash, Door & Moulding Mills, Hogan Lumber Co., Loop Lumber & Mill Company, The Lumber Products Association, Inc., Smith Lumber Co., Tilden Lumber Co., E. K. Wood Lumber Co., Wood Products, Inc., Zenith Mill & Lumber Co., be and each of them are hereby sentenced to pay a fine to the United States of America in the sum of Two Thousand and No/100 (\$2,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment, be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the  
Attorney General.

Entered and filed this 20th day of December, 1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

*vs. United States of America*

1373

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S.

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

78.

J. F. CAMBIANO.

### JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, J. F. Cambiano, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him

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and no sufficient cause to the contrary being shown or appearing to the Court. It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the United States in the sum of Five Thousand and No/100 (\$5,000.00) Dollars; if said Fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,  
Judge.

A True Copy. Certified this 20th day of December, 1941.

WALTER B. MALING,  
Clerk.

By C. W. CALBREATH,  
Deputy Clerk.

Examined by:

WALLACE HOWLAND,  
Special Assistant to the  
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page  
600. [1062]

*vs. United States of America*

1375

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

v.

CHARLES HELBING

### JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Charles Helbing, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having

been found guilty of said offense, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the  
Attorney General.

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA,

v.

C. H. IRISH.

### JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, C. H. Irish, appearing in proper person, and by counsel and.

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court. It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

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United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid, that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months;

It is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the  
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page 603. [1064]

District Court of the United States, Northern District of California; Southern Division.

No. 26977-S.

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2.

UNITED STATES OF AMERICA

~ v.  
W. P. KELLY.

### JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, W. P. Kelly, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine

to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December,  
1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE ROWLAND,

Special Assistant to the  
Attorney General.

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

v.

WALTER O'LEARY.

### JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Walter O'Leary, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, hav-

ing been found guilty of said offense, pay a fine to the United States in the sum of One Thousand and No 100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and ~~that~~ the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,  
Clerk.

By C. W. CALBREATH,  
Deputy Clerk.

Examined by:

WALLACE HOWLAND,  
Special Assistant to the  
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page 603. [1066].

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

v.

EMIL H. OVENBERG.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Emil H. Ovenberg, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having

been found guilty of said offense, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the  
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page  
606. [1067]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

DAVE RYAN.

### JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Dave Ryan, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court—

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

United States in the sum of Five Thousand and No/100 (\$5,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail Type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December; 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the  
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page  
599. [1068]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Section 1 and 2

UNITED STATES OF AMERICA

v.

W. L. WILCOX.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, W. L. Wilcox, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court. It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,  
Clerk.

By C. W. CALBREATH,  
Deputy Clerk.

Examined by:

WALLACE HOWLAND,  
Special Assistant to the  
Attorney General.

Entered in Vol. 32 Judg. and Decrees at Page  
608. [1069]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

CHARLES ROE.

JUDGMENT AND COMMITMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendant, Charles Roe, appearing in proper person, and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendant did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, and duly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offense, pay a fine to the

United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. F. ST. SURE,

United States District Judge.

Entered and Filed this 20th day of December, 1941.

(Signed) WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Examined by:

WALLACE HOWLAND,

Special Assistant to the

Attorney General.

Entered in Vol 32 Judg. and Decrees at Page 607. [1070]

District Court of the United States, Northern District of California, Southern Division.

No. 26977-S

Criminal Indictment in Two Counts for Violation of U.S.C.A. Title 15, Sections 1 and 2

UNITED STATES OF AMERICA

vs.

REDWOOD MANUFACTURING CO., HARRY W. GAETJEN, CHARLES GUSTAFSON, J. A. HART, W. P. HOLMES, CHARLES MONSON, FRED SPENCER, CARL A. WARDEN, and CHRISTIAN A. WILDER.

JUDGMENT

On this 20th day of December, 1941, came the United States Attorney, and the defendants above named, appearing in proper person, and by counsel, and

The defendants having been convicted on plea of nolo contendere to the offense charged in the First Count of the Indictment in the above-entitled cause, to-wit: Violation Title 15 U.S.C.A. Section 1—that defendants did on or about September 1, 1936, combine and conspire with other defendants for the purpose of unlawfully, unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber in violation of the Sherman Antitrust Act; and the defendants being now asked whether they have anything to say before judgment is pronounced against them and no

Sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that Redwood Manufacturing Co., Harry W. Gaetjen, Charles Gustafson, J. A. Hart, W. P. Holmes, Charles Mofson, Fred Spencer, Carl A. Warden, and Christian A. Wilder be and each of them are hereby sentenced to pay a fine to the United States of America in the sum of One Thousand and No/100 (\$1,000.00) Dollars; It is further ordered that execution of Judgment be stayed for Ten Days.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed.

A. F. ST. SURE,

Judge.

Examined by:

WALLACE HOWLAND,

Special Assistant to the

Attorney General.

Entered and filed this 20th day of December, 1941.

WALTER B. MALING,

Clerk.

By C. W. CALBREATH,

Deputy Clerk.

Entered in Vol. 32 Judg. and Decrees at Page 610. [1071]

District Court of the United States  
Northern District of California  
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday the 20th day of December, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977.

[Title of Cause.]

This case came on regularly this day for the pronouncing of judgment on certain defendants: Tom Clark, Esq., and Wallace Howland, Esq., Special Assistants to the Attorney General, appeared on behalf of the United States. Harold Faulkner, Esq.; Hugh McKevitt, Esq.; Jack Howard, Esq.; M. A. Harrison, Esq.; Moses Lasky, Esq.; J. M. Thomas, Esq.; M. J. Doyle, Esq.; William T. Doyle, Esq.; Maurice E. Cary, Esq.; and Clarence E. Todd, Esq., appeared as Attorneys for the defendants.

Mr. McKevitt moved the Court that the matter of the pronouncing of judgment as to certain defendants be continued. After hearing Mr. McKevitt, It Is Ordered that said motion be denied.

Mr. Howard moved the Court to grant a new trial as to certain defendants. After hearing Mr. How-

ard, It Is Ordered that said motion be denied. Mr. Howard then moved [1072] the Court to grant the Pleas in Abatement heretofore filed by certain defendants, and to grant a Motion in Arrest of Judgment as to said defendants. Mr. Howard offered in evidence all the papers filed in Miscellaneous Case No. 2734, entitled "In the Matter of the Subpoena returnable before the Grand Jury impaneled by the Honorable A. F. St. Sure, Judge of the above-entitled Court, which subpoena was issued out of and under the seal of said Court and directed to Local Unions, No. 42 and No. 550, United Brotherhood of Carpenters and Joiners of America", together with the Minute order entered in matter on May 13, 1940. After hearing Mr. Howard, It Is Ordered that said motions be and the same are hereby denied.

Mr. Faulkner, on behalf of certain defendants, moved the Court to grant a new trial as to certain defendants. After hearing Mr. Faulkner, It Is Ordered that said motion be denied. Mr. Faulkner, on behalf of the same defendants, moved the Court to grant a Motion in Arrest of Judgment. After hearing Mr. Faulkner, It Is Ordered that said motion be denied.

Thereupon the defendants who were found Guilty by the Jury, being present in Court, were called for judgment. The defendants having been now asked whether they have anything to say why judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court,

Ordered and Adjudged that Alameda County Building & Construction Trades Council, The Bay Counties District Council of Carpenters of The United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, [1073] The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, for the offense of which they stand convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of Five Thousand and No/100 (\$5,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

Ordered that judgment be entered herein accordingly.

\* \* \*

Ordered and Adjudged that J. F. Cambiano, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States of America in the sum of Five Thousand and No/100 (\$5,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to

be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein. [1074]

Ordered and Adjudged that the defendant Dave Ryan, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of Five Thousand and No/100 (\$5,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

\* \* \*

Ordered and Adjudged that the defendant Charles Helbing, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said [1075] defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

\* \* \*

Ordered and Adjudged that the defendant C. H. Irish, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

[1976]

Ordered and Adjudged that the defendant W. P. Kelly, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thou-

sand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon the motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

Ordered and Adjudged that the defendant Walter O'Leary, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the [1077] Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

\* \* \*

Ordered and Adjudged that the defendant Emil H. Ovenberg, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 Dollars (\$1,000.00), or if said fine is not paid that the defendant be committed to the custody of the United States Marshal for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

\* \* \*

Ordered and Adjudged that the defendant Charles Roe, for the offense of which he stands convicted on the verdict [1978] of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No/100 Dollars (\$1,000.00), or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

Ordered and Adjudged that the defendant W. L. Wilcox, for the offense of which he stands convicted on the verdict of the Jury of Guilty of the offense charged in the First Count of the Indictment, pay a fine to the United States in the sum of One Thousand and No. 100 (\$1,000.00) Dollars, or if said fine is not paid that the defendant be committed to the custody of the Attorney General for imprisonment in an institution of the Jail type to be designated by the Attorney General or his authorized representative for the period of Six (6) Months.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to the [1079] said defendant.

Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Upon motion of the Attorney for the above defendant, It Is Ordered that execution of said judgment be stayed for the period of one (1) week.

Thereupon the defendants who had previously entered pleas of Nolo Contendere, with the excep-

tion of D. N. Edwards, Andrew P. Nelson, Nels E. Nelson and Robert W. Shannon, being present in Court, were called for judgment.

With the consent of Mr. Clark, each of the defendants who had previously entered pleas of Nolo Contendere were permitted to withdraw said pleas as to the Second Count of the Indictment. Upon motion of the Attorneys for the defendants, and with the consent of Mr. Clark, the Second Count of the Indictment was dismissed as to these defendants.

After hearing Mr. Clark and the various Attorneys for the defendants, and the said defendants having been now asked whether they have anything to say why judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendants—

Acme Manufacturing Co., Inc.,

Boorman Lumber Co.,

Eureka Mill & Lumber Company,

Eureka Sash, Door & Moulding Mills, [1080]

Hogan Lumber Co.,

Loop Lumber & Mill Company,

The Lumber Products Association, Inc.,

Smith Lumber Co.,

Tilden Lumber Co.,

E. K. Wood Lumber Co.,

Wood Products, Inc.,

Zenith Mill & Lumber Co.,

for the offense of which they stand convicted on their pleas of Nolo Contendere to the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of Two Thousand and No/100 (\$2,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

Ordered that judgment be entered herein as to each of the aforesaid defendants.

Upon motion of the Attorneys for the said defendants, ordered that execution of judgment be stayed for the period of ten (10) days.

\* \* \*

Ordered and Adjudged that Harry W. Gaetjen, Charles Gustafson, J. A. Hart, W. P. Holmes, Charles Monson, Fred Spencer, Carl A. Warden, and Christian A. Wilder, for the offense of which they stand convicted on their pleas of Nolo Contendere to the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of One Thousand (\$1,000.00) [1081] Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

Ordered that judgment be entered herein as to each of said defendants.

Upon motion of the Attorneys for the defendants,

it is ordered that execution of judgment be stayed for the period of ten (10) days.

Ordered that the matter of the pronouncing of judgment as to the defendants D. N. Edwards, Andrew P. Nelson, Nels E. Nelson and Robert W. Shannon be continued until Monday, December 22, 1941. [1082]

District Court of the United States  
Northern District of California  
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 22nd day of December, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable A. F. St. Sure, District Judge.

No. 26977

[Title of Cause.]

This case came on regularly this day for the pronouncing of judgment upon the defendants D. N. Edwards, Andrew P. Nelson, Nels E. Nelson and Robert W. Shannon. The said defendants were present in Court with their Attorney Morgan J. Doyle, Esq. Walter M. Lehman, Esq., Special Assistant

to the Attorney General, was present for and on behalf of the United States.

With the consent of Mr. Lehman, the defendants were allowed to withdraw their former plea of Nolo Contendere as to the Second Count of the Indictment. Upon motion of Mr. Doyle and with consent of Mr. Lehman, It Is Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants.

The defendants were then called for judgment, and said defendants having been now asked whether they have anything [1083] to say why judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered that the defendants D. N. Edwards, Andrew P. Nelson, Nels E. Nelson, and Robert W. Shannon, for the offense of which they stand convicted on their pleas of Nolo Contendere to the offense charged in the First Count of the Indictment, be and each of them is hereby sentenced to pay a fine to the United States of America in the sum of One Thousand and No/100 (\$1,000.00) Dollars.

It Is Further Ordered that the Second Count of the Indictment be and the same is hereby dismissed as to said defendants, as aforesaid.

Further Ordered that judgment be entered herein accordingly.

Upon motion of Mr. Doyle and with consent of Mr. Lehman, It Is Ordered that execution of said judgment be Stayed for the period of ten (10) days.